



Regulation and Compliance
Department of Internal Affairs
Te Tari Taiwhenua

REPORT FORM

TO: 9(2)(a) Manager Compliance and Investigations.

FROM: 9(2)(a) Investigating Accountant, and
9(2)(a) Senior Gambling Inspector.

DATE: 19 March 2009.

SUBJECT: Discussion Document on 'Full Financial Review' – Pockets 8 Ball Club Incorporated.

NOTE: This document is prepared solely as an internal discussion document.

Introduction:

1. We were instructed to undertake a Full Financial Review of the Pockets 8 Ball Club Incorporated ("Pockets") and undertook this task in Tokoroa from Wednesday 19th to 21st November 2008. This review ran alongside a traditional audit of the Club.

2. The purpose of the review was to determine the appropriate recording of both income and costs of Pockets, to assess the proper allocation of overhead costs to the gaming aspects of their operation, to determine whether its several class 4 venues are "...not used mainly for operating gaming machines..." [Sec. 67 (1) (k)], and to test the appropriateness of their acquisition of new venues.

3. This report records our findings.

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Background:

4. Pockets is an incorporated society that has operated in and around Tokoroa for some years with the goal of promoting cue sports (billiards, snooker, 8 ball and 9 ball pool) and has, since its inception, been effectively run on a "family basis" to the extent that the two current General Managers of the Club are a brother and sister team of Bruce Wilkinson and Wendy Cook.

5. It is also noteworthy that the Club President is a Mr. Peter Cook, the husband of Wendy Cook.

6. Pockets prides itself on its impact within the community in taking young persons 'off the street' and fostering their interest in cue sports rather than see them drift into areas of community concern. It is interesting to note that in a recent incident where a youth club member came to the notice of the local Police, he was suspended from the club

7. The Club operates on a membership basis and currently claims to have in excess of 4000 members. Membership figures provided, give the following regional breakdown: Tokoroa 1200, Rotorua 1000, Glen Eden 1100 & Pukekohe 800.

8. Pockets operates from 6 venues at present, as follows:

8.1. A bar formerly called 'Shotz' at 42 Mannering Street, Tokoroa

8.2. A Gaming Lounge/Pool room at 38 Bridge Street, Tokoroa.

8.3. A Gaming Lounge/Pool room at 1122 Hinemoa Street, Rotorua.

8.4. A public Venue (Mavericks) at 40-48 Downing Street, Glenfield, Auckland – this is not regarded as a Pockets Club, but is a venue that Pockets operates 18 gaming machines in. The venue operator is Tara Shannon, a person who has a long association with cue sports related venues.

[Note: Only the above four venues feature in Pockets financial accounts to March 2008, as the two further venues set out below were acquired after March 2008]

8.5. A Gaming Lounge/Pool room at 21 Massey Road, Pukekohe.

8.6. A Gaming Lounge/Pool room at 200 West Coast Road, Glen Eden, Auckland.

9. The 6 venues have varying mixes of gaming machines, cue sport tables, dart boards, chess tables, table tennis tables, TV's and bar facilities. The mix and focus of each of these venues will be discussed later in this report.

Our approach:

10. As requested, we were provided with financial records for each of the three years 2005/06, 2006/07 and 2007/08. These included financial statements, general ledger printouts, trial balances, journals, bank statements, cheque butts, minute books and access to other support documents as required.
11. We focussed our inquiries on the two latest years and accepted the income as recorded.
12. We turned our attention rather to the expenses of Pockets and identified those costs in excess of approximately \$20,000 and traced these, via the appropriate general ledger account, back to source documents and verified the *bona fides* of a substantial number of those costs.
13. We also had three in-depth meetings with the two General Managers of Pockets and on one occasion the Accountant for the Club (Debbie Gisby of Graham Brown and Co Ltd from Putaruru) joined us and we covered off various queries that arose during our review.
14. We were satisfied that the staff of Pockets were totally forthcoming and could detect no attempt to cover over or hide any aspect of Pocket's operations raised by us.
15. Apart from some technical aspect of cost allocation, which we discuss later, we have concerns arising from our review of the expenses of Pockets.

The Financial Statements.

16. In that Pockets has both a gaming and a non gaming focus, the financial statements record the financial impacts of each focus separately.
17. Income from gaming is reflected in separate 'Trading Accounts' for each venue and, after deducting direct gaming costs, the resulting net proceeds are swept into a Statement of Financial Performance.
18. In similar fashion there are two separate accounts recording non gaming income. This consists primarily of bar sales in the Shotz premises in Tokoroa and an account styled "8 Ball Account" which records all other non gaming income from all venues such as entry fees, income from sponsors, confectionery sales and the like together with membership fees.
19. The net surplus from the Shotz account and the substantial loss for the '8 Ball Account' are then transferred to the Statement of

Financial Performance we mentioned above.

20. That Statement of Financial Performance holding the substantial surpluses from the gaming Trading Accounts and the 'Shotz account' are then offset by the losses from the '8 Ball account' and the overall resulting surplus then transferred to Pockets equity.

21. By these simple accounting transfers, Pockets have effected the application of gaming net proceeds to the overall operational needs of the Club. However, there is insufficient discipline in determining whether all operational costs come within the definition of '*authorised purposes*' – a case in point being interest costs on loans to purchase commercial premises..

22. To fully appreciate the financial impacts of Pockets results for the 2007/08 year, we have expressed them in an abbreviated form in an attached spreadsheet.

23. That spreadsheet demonstrates such an imbalance of gaming income to other income and an equal imbalance of costs in respect of the cue sport aspect of their operations compared to gaming, that it is a feature of their overall operations that cannot be ignored when determining whether or not a class 4 venue is " ,,, ,used mainly for operating gaming machines.." [Sec. 67 (1) (k)]

24. Of their total income for the year ended March 2008 amounting to \$3.57M, over 96% (\$3.09M) was derived from gaming machines.

25. The two non-gaming sources of income (cue sports and bar sales) of Pockets and associated costs produced an overall loss of \$991,298. This sum was 'covered' by an application of gaming net proceeds.

26. An additional distribution to external gaming fund applicants of \$157,788 was also undertaken.

27. The overall year's surplus of \$430,379 was then transferred to Equity and heightened an already significant level of undistributed funds. We discuss this aspect later in our report when assessing financial viability in respect of the 2008/09 year.

28. A disturbing aspect of the analysis is that costs incurred in the non gaming '8 Ball account' and then met by an application of funds from gaming net proceeds, is that they are not subject to the expected disciplines that apply when public gaming societies make external grants.

29. In the case of Pockets for example, the Club employs 2 General Managers on salaries of 9(2)(a) each. The two Managers are brother and sister (Bruce Wilkinson and Wendy Cook) and are accountable to

the Club's Management Committee comprised largely by other family members and Chaired by Wendy Cook's husband, Peter Cook.

30. We are not necessarily making a finding that the salaries are excessive, but note a lack of what we consider to be a discipline of the sort required in determining actual, reasonable and necessary costs in the overall costs structures of the non gaming account of Pockets. They seem to be content in the knowledge that the totality of such costs will be met by transfers from the earnings of the gaming machines run by the Club.

Cost allocations between cue sport and gaming aspects of the Club.

31. In instances, such as this, where a Class 4 Licence holder carries on an aspect of their business other than gaming, there needs to be a careful and appropriate recognition that costs that impact across the entire spectrum of their operations may require an arbitrary split so as to fairly impact both the gaming and non gaming aspect of that business.

32. To leave dual-impacting costs in one area alone distorts financial performance in both areas and in the context of attempting to assess the financial viability of an applicant's "...*proposed gambling operations...*" it is necessary to ensure that there is no unwarranted cross subsidisation of the applicants gaming costs.

33. It was noted, for example, that other than salaries and wages the single greatest cost impacting Pocket's non gaming operations is 'Travel and Accommodation' amounting to in excess of \$100,000 in both 2006/07 and 2007/08.

34. These costs arise primarily due to Pocket sponsoring many of its better performing members to tournaments throughout NZ and often overseas.

35. However, we noted that the attendance of members of Pocket's executive at the annual Gaming conference in Auckland (costing in excess of \$2,000) was not debited to a gaming cost code and demonstrates an instance where cost coding is not thought through carefully enough.

36. It was also noted that by year end journal an apportionment of "20% of total vehicle costs" was debited to 'the Bar' and credited against Pool costs. It is also clear that thought was given to building repairs and maintenance and a similar arbitrary adjustment made in respect of rubbish collection costs whereby 20% was transferred out of that repairs and maintenance account and debited to one of the pool cost codes

37. We raised this point with the Accountants and pointed out that similar types of adjustments are probably appropriate with respect to the gaming aspect of Pockets.

38. We advised, for example, that no audit or accounting fees featured as a gaming cost and there was a general acceptance that greater care was required in this area. We also believe some thought ought to be given to an allocation of the joint General Manager costs of 9(2)(a) so as to express some portion of that overhead to Gaming.

Financial Viability in respect of the year ending March 2009.

39. In conjunction with our review we gave brief consideration to the ongoing financial viability of Pockets, this being necessary in light of their application for renewal of their Class 4 Operator's licence for the year ending March 2009.

40. A separate report will be issued with respect to this matter but we consider it needful to record that the equity (undistributed funds) of Pockets now stands at \$1.195M. When expressed as the number of weeks of an average week of net proceeds on hand it amounts to over 30 weeks worth and is a matter of concern.

41. However, in that that equity sum also includes goodwill from previous business takeovers, it is a spurious conclusion and 9(2)(a) will be meeting with the Pockets accountants for a total re-cast of the accounts to more clearly reflect the actual undistributed funds position.

The main or principal purpose of each venue.

42. Both the *Gambling Act 2003* ("the Act") and the *Gambling (Harm Prevention and Minimisation) Regulations 2004* ("the Regs") focus on the main or principal purpose of a **gaming venue** and in their combined terms, prohibit the use of premises as class 4 venues where gaming machines are other than an ancillary purpose.

43. Their separate provisions are:

In terms of the Act -

- (a) "*The Secretary must refuse to grant a class 4 licence unless the Secretary is satisfied that...the class 4 venue is **not used mainly** for operating gaming machines...*" (Section 67 (1) (k)) [emphasis added]

In terms of the Regs -

- (b) "*The following venues are declared unsuitable to be a class 4 venue: ...A venue at which the **primary activity is anything***

other than on site entertainment, recreation or leisure focussed on persons 18 years and over..... “ (Regulation 4 (a)) [emphasis added]

44. It is clear that both legislative provisions apply on a venue-by-venue basis and are not a focus on the entirety of operation of a class 4 operators licence holder. Therefore if an Operator's 'umbrella' purpose is ostensibly acceptable it may well be that in respect of each or any venue there could be no failing.

45. Therefore in a case such as Pockets, this requires an independent assessment of each of it's venues and could conceivably, arrive at different conclusions in respect of each one.

46. It is noted that in a decision by the Gambling Commission¹ it commented that:

“When determining whether or not a venue is used in the main for operating gaming machines, the decision-maker must make an overall assessment of the venue, including the consideration of a number of indicia, such as relative floor areas, prominence of gaming machines, promotion and extent of other activities, revenue streams and ability to participate in the activities. No one matter was considered by the Commission to be individually determinative of whether a venue is “used mainly” for operating gaming machines, this assessment is to be made in the round.”

47. Bearing those criteria in mind we have considered each of the 4 venues in which gaming machines are operated by Pockets during 2007/08, and the 2 venues acquired since March 2008, as follows:

The Venues

Pool Lounge, Tokoroa. (“Shotz”)

48. There are swipe card facilities at this venue but it appears when the venue is open this system is not used.

49. This venue has clear signage that it is a private Club and that non members, whilst welcome, were required to sign in as visitors. When visited, staff were in attendance at the door, or at the bar which is in close proximity to the entrance. It is a building of approximately 12 by 26 metres with around 10% of that area set aside for the siting of 16 gaming machines.

50. There is the ability to have swipe access to the premises but someone was 'on duty' when we visited the premises and signing in

¹ First Sovereign Trust and Whiskey Jacks Limited GC43/06

facilities for non-members was prominently on display. The actual entry to the gaming lounge is accessible almost immediately upon entry into the premises and is a prominent feature of the layout of the premises.

51. There is a modest bar facility with 'leaners', two pool tables and 1 dart board also available for patrons. The premises hold a club liquor licence.

52. By letter dated 29 January 2009, Pockets legal advisor informed DIA the rationale for purchasing Shotz in the following terms:

"In early 2004 the Club looked for premises to expand its core base in Tokoroa. The Club was hosting a number of large tournaments in Tokoroa and had inadequate facilities to host adult players and to cater for prizegivings and after match functions"

53. This explanation seem at odds with the knowledge that there are only two pool tables in this venue, very little room for hosting 'after match functions' and a very substantial and reasonably vacant area on the first floor of 56 Bridge Street, Tokoroa that are used for prize giving and other social functions.

54. The gross income from bar and food sales for the year ended March 2008 amounted to \$326,114 and after deducting relevant costs provided a net profit to Pockets of \$48,784

55. Conversely the gross proceeds from gaming machines amounted to \$1,002,552 (3 times that of the revenue in respect of bar sales etc) and after deducting costs provided net proceeds of \$511,028 – almost 10 times that of non gaming activity at the venue.

56. When it comes to determining whether Shotz is a venue not used mainly for operating gaming machines or its 'primary activity', it is arguable whether the comparisons of gross revenue from bar and food sales as opposed to gaming machine proceeds, is determinative either way.

57. To achieve greater certainty in this matter may require actual counts being taken over various days as to patron activity.

Conclusion: At this stage, we conclude that this venue is used mainly for the operation of gaming machines. The prominence of the separate gaming machine area as you enter the premises, the minimal provision of pool tables and other forms of non-gaming entertainment, the membership fee structure and quantum and the substantial imbalance in the financial contributions from gaming machines, as opposed to other forms of income at Shotz, lead us to this conclusion. However, we concede that a factual appraisal of patron habits may well establish that the gaming machines are a secondary activity only.

Pockets Pool Lounge, 56 Bridge Street, Tokoroa.

58. Pockets also operate a Pool/Billiard Lounge in 56 Bridge Street, Tokoroa. There are no gaming machines on these premises, it being entirely given over to cue sports. It is the premises used by Pockets for tournaments, prize giving purposes and other functions involving large numbers of club members. It is also the main offices of the Club and the premises from where their administrative staff work.

Pockets 8 Ball Club, 38 Bridge Street, Tokoroa.

59. This venue occupies a site in one of the main streets of Tokoroa with access by member's swipe card only. With no card, entry is only possible after the visitor has been sighted by closed circuit TV, and the door released for entry.

60. It occupies a total area of approximately 300 square metres that is divided into 2 areas one of which contain 18 gaming machines of about 50 square metres.

61. There are 2 pool tables and 4 poker tables occupying an area the full depth of the building and also boasts a reception area with TV.

62. Gross proceeds from gaming machines amount to \$1,356,711 with direct costs reducing that sum to net proceeds of \$700,941. There is no venue-by-venue accounting for income from sundry sales (other than gaming) but are expressed in the "8 Ball Account" in an overall sense.

63. But even in total terms, sales other than gaming (and bar sales in Shotz) amount to less than \$70,000 from all venues for the year ended March 2008 and this sum includes \$21,000 from entry fees.

Conclusion: We conclude that this venue is **not** used mainly for the operation of gaming machines. The substantial floor space given over to pool tables and the programs, tournaments, competitions and training given on these premises lead us to this conclusion. However, we are of two minds, given the revenue streams in respect of this venue but when determining 'use' and not solely focussing on income, it is difficult to arrive at a conclusion other than that expressed above.

Pockets 8 Ball Club (ex Legends), Hinemoa Street, Rotorua.

64. This new (to Pockets) venue came 'on stream' for the last two months of the 2007/08 year and is in Hinemoa Street, Rotorua.

65. There are no swipe card facilities at this venue, however there is signage to the effect that it is a private club and that non members, whilst welcome, were required to sign in as visitors. This premises

has been visited on many occasions by Compliance staff since becoming part of the Pockets stable, on only one occasion was there a staff member present checking the membership of persons entering the venue. Pockets advise that it is their intention to install swipe card facilities as soon as possible.

66. Prior to this it was a public venue operating Bay Foundation gaming machines. It is difficult to understand how there have been 1000 members 'recruited' in the Rotorua area in such a short period that this venue has been operating as a club.

67. Since being taken over by Pockets it has renovated various aspects of the interior of the premises including relaying carpet in the pool table area of the Club. It had previously been warned that during the time the carpet was being re-laid, and the pool tables not therefore available to members, their primary activity had ceased and it was therefore illegal to operate gaming machines during that time.

68. A separate investigation was carried out and a file has been forwarded to the Crown to prosecute the club under s. 19 of the Act.

69. It is a well appointed venue with the 18 gaming machines occupying floor space equal to approximately 15% of the whole site.

70. There are 8 pool tables in a newly carpeted area together with other club type facilities.

71. There is no liquor at the venue. They applied to the Rotorua CC for a club liquor licence in 2008. This was refused and the matter went to a hearing of the Liquor Licensing Authority. On the grounds (among others) that it was considered not to be a genuine club, they were unsuccessful in gaining a club liquor licence.

72. Gross proceeds from gaming machines amount to \$136,403 with applicable costs reducing that sum to net proceeds of \$32,902 albeit for only a 2 month period. As in the case of 38 Bridge Street above, there would appear to be only a very modest level of income other than from gaming.

73. Being relatively new to Pockets there does not appear to be the same level of club activities, tournaments, competitions and the like as is evident on 38 Bridge Street Tokoroa but this is likely to grow in the foreseeable future.

Conclusion: We conclude that this venue is **not** used mainly for the operation of gaming machines. The substantial floor space given over to [number] pool tables and the limited but growing programs, tournaments, competitions and training given on these premises lead us to this conclusion. However, we are again of two minds, given the revenue streams in respect of this venue but when determining 'use'

and not solely focussing on income, it is difficult to arrive at a conclusion other than that expressed above.

“Mavericks” Glenfield, North Shore, Auckland.

74. This is a public venue situated in Glenfield, Auckland and is essentially a bar with 18 gaming machines.

75. Its primary purpose is considered to be a bar.

Pockets 8 Ball Club, 21 Massey Road, Pukekohe.

[Even though this venue only came within Pockets ownership after March 2008, the following comments reflect our findings as to its ongoing primary activity.]

76. This venue formerly known as “Rack n Roll” is now operated as a Pockets 8 Ball Club venue at 21 Massey Road, Pukekohe. Entry is operated on a swipe card basis with non members having to be let into the venue.

77. A [redacted] along with her daughter [redacted] run the club. Their husband/father [redacted] previously owned it before being purchased by Pockets on 1 August 2008.

78. At the time of our visit there were no patrons playing pool but about half of the gaming machines were being played.

79. The Club operates a swipe card system and have done so for some time. We were advised that current membership is 991 with about 10 of those being junior members (aged 10-18 years) Membership is \$5 and is renewable annually with the current expiry date being March 2009.

80. Alcohol is not currently sold on these premises.

81. There is a strong focus on various iterations of pool at this venue with the following weekly programs in place.

Tuesday	8 ball tournament
Wednesday	Ladies tournament and Poker night
Thursday	Valley Pool
Friday	Pool competition
Sunday	Junior competition.

82. Pukekohe Valley Pool Association also operates from these premises and currently has 40 members. NZ Valley Pool is currently under investigation in respect to use of grants from numerous societies.

83. The floor space of the gaming room is estimated at less than 10% of the total floor area. This result reflects that of most visits to the venue by GI's.

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Conclusion: We conclude that this venue is **not** used mainly for the operation of gaming machines. The substantial floor space given over to 14 Pool/snooker tables, 3 poker tables, 'leaners' a TV etc and the reasonably heavy programs involving tournaments, competitions and training given on these premises leads us to this conclusion. The revenue from the 18 gaming machines approximates \$20K - \$30K per week and this not insubstantial income again throws into question the issue of 'main use'. Bearing in mind the need to consider this matter from an overall perspective however, leads us to that opinion expressed above.

Pockets 8 Ball Club, 200 West Coast Road, Glen Eden.

[Even though this venue only came within Pockets ownership after March 2008, the following comments reflect our findings as to its ongoing primary activity.]

84. This venue formerly known as "Lucky Break" is now operated as a Pockets 8 Ball Club venue at 200 West Coast Road, Glen Eden. Entry is operated on a swipe card basis with non members having to be let into the venue.

85. It is managed by a b(2)(a) who, along with his wife b(2)(a) run the club and previously owned it before Pockets purchased it on 13 May 2008. Their children also work at the club with the family very involved in pool and playing competitively.

86. The club operates a swipe card system and although there were initial problems with this, it is now working properly and is required to gain entry. We were advised that current membership is 1340 with about 70 of those being juniors (aged 10 – 18 years). Again, an interesting figure considering their short time as a Pockets club.

87. Membership is \$5 and is renewable annually with the current expiry date being March 2009.

88. Alcohol is not currently sold on the premises.

89. There is a strong focus on various iterations of pool at this venue with the following weekly programs in place.

Monday	Junior coaching and Women's competition
Tuesday	Women's coaching and open competition.
Wednesday	Valley Pool
Thursday	Poker night
Friday	9 ball Pool competition
Sunday	Junior competition.

90. Glen Eden Valley Pool Association also operates from these premises and currently have 70-80 members with membership set at \$20 pa.

91. The floor space of the gaming room is estimated at below 10% of the total floor area of the venue.

Conclusion: We conclude that this venue is **not** used mainly for the operation of gaming machines. The substantial floor space given over to 10 Pool/snooker tables, 1 table football game, 2 massage chairs, a TV, a Juke box and 'leaners' and the reasonably heavy programs involving tournaments, competitions and training given on these premises leads us to this conclusion. The revenue from the 18 gaming machines approximates \$15K - \$21K per week and this not insubstantial income again throws into question the issue of 'main use'. Bearing in mind the need to consider this matter from an overall perspective however, leads us to that opinion expressed above.

The overall context – is this a Club?

92. Section 2 of the *Gambling Act 2003* defines a "Club" as:

"...a voluntary association of persons combined for a purpose other than personal gain"

and there are two aspects of that definition that requires analysis so as to determine whether Pockets is indeed a Club in terms of the Act.

93. Firstly, is there in reality, a 'voluntary association of persons' and secondly, is there any sense in which there is 'personal gain' in the operations of Pockets?

Is there "voluntary association?"

94. In attempting to determine whether this is so, it is needful to ask 'What brings about such an 'association'? In our view, the fact of over 4000 persons enjoy playing cue sports is 'the purpose' of them coming together but that hardly satisfies the issue of whether there is a *"..voluntary association.."* within the context of the Act. It is also very questionable as to how many of the alleged 4000 members have ever played any form of cuesports at the venues, and not just been gaming machine players.

95. In a Club context we submit that the idea of a voluntary association normally involves consideration of such concepts as:

- Membership fees quantum and structures,
- Vetting of new members,
- Full membership participation in the affairs of the Club
- Admission to and participation in all meetings of the Club
- Voting rights

and that when those concepts, or aspects of any of them are lacking, it would be difficult to construe that a 'voluntary association' really exists

at all. Rather, it is the common love of cue sports that bind them and not an association in the nature of a Club – with its attendant rules and charters – that does so.

96. It is needful therefore to comment on each of these matters in the context of Pocket.

(a) membership fees.

97. These fees have been set at \$5 pa and have remained unchanged since at least 2003. In this context it is noted that Pockets day-to-day costs – other than those related to gaming – are grouped into 'Competition Expenses', 'Maintenance and Building Expenses', 'Administration Expenses' and 'Personnel Expenses' and for the 2007/08 year amounted in total to \$1,107,019 and produced, after deducting sundry income including membership fees, a **net operating loss of \$948,489**.

98. This loss is then offset by the application of net proceeds from gambling. This imbalance of funding streams is extreme with over 86% of total income of the so called Club coming from gaming machines and reinforcing, in our view, the conclusion that the 'membership fee' is no more nor less than tokenism.

99. In our view, such a level of membership fee lacks reality and can hardly be construed as forging a 'voluntary association' of people.

100. Indeed when Pockets recently challenged the refusal of the Rotorua District Council to issue it with a Club liquor licence in respect of its 'Clubrooms' in Hinemoa Street, Rotorua, the Liquor Licensing Authority, in declining their appeal, commented, albeit under a different statutory regime, that –

"...it is our opinion that the way that membership is obtained is little more than the equivalent of a day membership..."²

101. We concur with that view and wonder how it could be argued that there is a genuine 'voluntary association' where the level of fees charged for that membership is nominal only and has not changed for at least the last 5 years.

(b) vetting of new members.

102. This seems to be honoured more in the breach than in reality.

103. In fact in our review of 4 years of Club minutes we found no Instance of any consideration of new membership applications nor any discussion whatsoever regarding membership; and this was

² Pockets 8 Ball Club Incorporated PH1325/2008

during the period of growth in supposed membership to over 4000 members.

104. The "Application for Membership" form contains the notation that "All membership applications subject to Management Committee approval" and the Constitution of Pockets (Clause 6 (b)) requires that applications shall be considered by the Management Committee. It also enables the Management Committee to require an interview with applicants if it, in its own discretion, considers such an interview is necessary.

105. We noted no instance in the 4 years of minutes reviewed of any instance where an interview was undertaken.

106. It is also noted that the Liquor Licensing Authority in the 'First Sovereign' case considered the non review of applications to be in breach of its own constitution.

(c) full membership participation in the affairs of the Club.

107. The supposed membership of Pockets now reaches from Tokoroa to Rotorua, Glen Eden, the North Shore of Auckland and Pukekohe. In this geographic context it is virtually impossible for there to be any meaningful participation by the membership at large in any major decision making of the Club, or be seriously considered as potential personnel of the Club's Management Committee.

108. The Management Committee of Pockets are all drawn from Tokoroa and are, apart from one person, members of the Cook and/or Wilkinson family. Several committee members, including the two General Managers, are permanent paid members of staff.

109. We are advised for example, that when the decision was made to appoint a second General Manager inthere was no prior consultation with the general Club membership, no external advertisement of the position, no sub committee of general members appointed to oversee and undertake the appointment and, given one of the applicants [OR the only applicant] was a brother of the existing General Manager (also a Management Committee member) and brother-in-law of the Club Chairman, we consider such a process to be less than in keeping with normal appointment procedures – even for a club – and more in keeping with a family controlled organisation with laudable goals but funded to a very substantial extent from gaming proceeds.

(d) admission to and participation in all meetings of the Club.

110 Again, the geographic spread of 'members' is such that participation in even the Annual General Meeting of the Club is

virtually impossible.

111. We are advised that notifications of the AGM are placed on a notice board at each venue and that email addresses of new members are sought for the purpose of electronic mailing of a monthly newsletter.

112. Other evidence presented at the Liquor Licensing Authority hearing referred to above, commented that::

- (a) Club notices used to be served by being posted to last address of the member, were now considered delivered if posted on the Club's notice board.
- (b) Amendments to the constitution used to require 75% majority now only needed a simple majority of those present at the meeting of which 14 days notice had been given.
- (c) A quorum used to be a third of the Club's membership has been reduced to 21 financial members.

113. In this context our review of the AGM minutes from 2003 to 2008 indicated member numbers present as follows:

2003 - 25 members
2004 - 21 members
2005 - 22 members
2006 - 23 members
2007 - 21 members
2008 - 32 members.

114. We are of the view that, along with a fee that amounts to little more than a 'day membership', no meaningful vetting of new members, no real involvement of the full membership in crucial aspects of the Club's administration and no practical involvement of members in its AGM, the clear goal of Pockets is to have no, or as little as possible hindrance to an unfettered access by the public at large to playing its gaming machines and thereby enhancing the financial fortunes of the Club.

115. It appears to us that Pockets would prefer the advantages of the application (as opposed to the distribution) of net proceeds inasmuch as the costs of the Club met by such application is not subject to the "*..actual reasonable and necessary..*" tests that apply to those costs that reduce gross proceeds to net proceeds.

The second issue to consider in determining whether Pockets is indeed a Club is:

The Issue of "personal gain"

116. In spite of a membership now in excess of 4000 persons, Pockets remains an organisation under the effective control of a

grouping that could be referred to as 'family'

117. Wendy Cook is one of the 2 General Managers of the Club. The other being her brother Bruce Wilkinson. Wendy Cook's husband, Peter is chairman of the Club.

118. In this context it is pertinent to note that at a Management Committee meeting of the Club held on 10th December 2008, those present included:

Peter Cook (Chair) (husband of Wendy Cook)
Wendy Cook (nee Wilkinson)
B. Wilkinson
D. Wilkinson
L. Wilkinson
W. Tamati

and welcomed to the committee for the first time was a P. Wilkinson – the former owner of Shultz.

119. Given the personnel of the Management Committee of Pockets, concerns arise as to the appropriateness of some recent actions and, in our view, could tend to indicate a 'regime of extravagance' within Pockets and lead to the conclusion that a purpose of the Club is one of 'personal gain'.

120. Having said that it is readily accepted that paying salaries and wages to Club members does not constitute personal gain but, although tenuous, it is arguable that the following two actions – taken in their widest context – could be seen as breaching the 'no personal gain' aspect of the definition.

(a) Purchase of Sholtz Bar, Tokoroa

121. This business, which was previously a public bar with 2 pool tables and 18 gaming machines, was owned by a Phyllip Wilkinson, a brother of Wendy Cook and Bruce Wilkinson General Manager of Pockets and a recent addition to the Management Committee.

122. The land and buildings are leased with 2 x 3 years rights of renewal. The annual rental was \$15,000.

123. The negotiated purchase price was 9(2)(a), consisting of 9(2)(a) for fixtures and fittings, 9(2)(a) for stock in trade and 9(2)(a) for goodwill. A deposit of 9(2)(a) was paid with the remaining 9(2)(a) funded by vendor finance over 9(2)(a) at 9(2)(a)

124. We understand goodwill to feature in a business sale only where it can be demonstrated that the business has an intangible quality of excellence (such as a history of producing 'super

profits') and only then in the range of around 2 to 3 times those profits less any necessary discount for industry risks.

125. In that the stock in trade taken over was only valued at \$1,000 there is some scepticism on our part as to the quality of the business purchased and therefore the quantum of goodwill paid.

126. When we inquired of Pockets about professional advice obtained by them to support the level of goodwill paid for this acquisition, we were advised that "...no formal professional advice was obtained apart from general discussions with our firm [their legal advisors] and the Club's accountant"

127. Enquiries have been made to attempt to determine whether the goodwill was reasonable and if not what powers the Department has to challenge the sale & purchase.

9(2)(a) spoke with 9(2)(a) a business consultant with Tabak and with 9(2)(a) a chartered accountant in Tokoroa. In summary given the lack of financial data pre sale, the length of time transpired since and the variables involved in valuing goodwill it was unanimously agreed that it would be a lost cause.

128. If it were to be demonstrated that the goodwill factor in this acquisition was excessive, then it certainly raises the issue of whether there is 'personal gain' in the context of that expression as used in the definition of "Club" in section 2 of the Act.

129. The Club's legal Advisor commented by letter on 29 January 2009, that:

"After months of continued searching for premises and negotiating with Phyllip an agreement for sale and purchase was signed in December 2004 for a total of \$429,000. The sum paid for goodwill and the benefit of the lease was \$400,000.00. Settlement of the purchase took place on 1 March 2005."

130. It is noteworthy that the two principal reasons put forward for acquiring the Shotz Pool Lounge was the current inadequate facilities to host adult players and the need to cater for prizegivings and after match functions. In this context the obvious pride with which Wendy Cook showed us their considerable pool lounge in 56 Bridge Street, Tokoroa (not the Shotz premises) and the large upstairs function room for prizegivings etc is surprising.

131. The upstairs function rooms above 56 Bridge street were exceptionally spacious and the fact that there have only been 2

pool tables at the Shotz premises for the 3 ½ years since acquisition calls into question both the motives of the purchase and the value paid for goodwill when purchasing the Shotz lounge.

132. In their letter of 29 January 2009 (quoted above) the Club's legal advisers also comment that:

"The sum paid for goodwill and the benefit of the lease are funded from non-authorized purpose money. The amount paid by the Club appears therefore to be outside the jurisdiction of the Department"

133. It is needful to respond on two grounds. Firstly, this part of our submission is simply trying to determine whether there is an element of 'personal gain; in this whole transaction and any argument as to how the cost of goodwill have been met are irrelevant. Secondly, the Club's level of 'non-authorized purpose money' is so insignificant in the overall context of the Club that the deficit arising when deducting all expenses from that limited income [\$948,489 – refer para 97 above] means that 'authorized funds' are being utilised to 'fill the gap' We believe their submission in this regard is unsustainable.

134. Added to questions around the need to purchase Shotz is the issue of the incidental acquisition of 18 gaming machines and the fact that the value of goodwill appears questionable particularly when it is paid to the brother of the two General Managers of Pockets.

135. It would seem to us that if, having taken professional advice, it was clear that the sum asked by the vendor for lease value and goodwill was clearly excessive, the option of not purchasing the Shotz bar was available. If that option was taken the only real loss to Pockets was access to 18 gaming machines. The bar is too small for prize giving functions.

136. We requested any financial data obtained by Pockets from the vendor to assist them in assessing the value of goodwill but this was either not obtained or not made available by the vendor but in any event was not provided to us.

137. It is noted that in 2 of the 3 more recent acquisitions by Pockets (Rack n Roll, Pukekohe and Lucky Break, Glen Eden) there was no goodwill aspect in the purchase price but in respect of Legends Bar, Rotorua there was a sum of \$185,000 paid for goodwill. However in 'Legends' case it was a seemingly more desirable business with twice the value of fittings (\$56k exclusive of the 18 gaming machines) and five times (\$5k) the value of stock on hand as that purchased in Shotz.

138. However, we contend that this transaction is one that constitutes 'personal gain' within the context of the definition of "club" in Section 4 of the *Gambling Act 2003* and set out below the consequences of such a conclusion.

(b) Employment of Staff

139. Pockets have employed Wendy Cook as General Manager (or some other like title) for some time but as the Club has increased in all respects they engaged Bruce Wilkinson (brother of Wendy Cook) as a second General Manager in April 2008.

140 We have not been advised as to the rationale for the appointment of a second co-general manager and made enquiries of Pockets as to how the appointment was undertaken.

141. We were advised that there was no advertisement of the new position and the appointment was undertaken without recourse to the normal procedures of filling senior staff vacancies.

142. They advised however, that when looking for a suitable Candidate they stated their requirements as including:

A person based in Tokoroa.

A person with a passion for cue sports.

A person with cue sports coaching experience, recognition in the cue sports fraternity and ideally a person who had been successful nationally and internationally.

A person with knowledge of the Club and ideally a rapport with the Club's members.

A person with experience in hospitality, the running of a Club and the running of a bar, and

A person with experience in class 4 gambling and an understanding of the class 4 regulations.

143. The Club went on to advise that "a number of existing members and staff were canvassed but only Bruce expressed interest in the role"

144. It is important to note that it would appear there is no hierarchical distinction between the two positions and both are on current salaries of 9(2)(a)

145. The "Employment Agreement" in respect of both positions is identical save for the provisions in Wendy Cook's case where it is recognised that she is a Councillor of the South Waikato District Council.

146. The 'Job Description' (schedule 1 of the agreement) is largely the same with only a slight difference of emphasis in each.

147. Each GM, in their own individual right, has delegated authority to:

9(2)(a)

148. Furthermore, each GM also has, in their own right, sole signing authority on the Club's trading cheque account. This appears to be at odds with the Constitution of Pockets in that clause 9 (c) requires:

"All cheques on the Club's bank account(s) shall be signed by two named officers. One of which will be the treasurer. The second signature will be that of either the president or the secretary"

149. Pockets have engaged professional assistance in setting GM salaries. However, the movement in the level of salaries has been marked. It was noted that at the Club's November 2007 meeting, salaries were discussed and the GM packages lifted to 9(2)(a) pa plus –

9(2)(a)

[Note: Mover and Seconder of the motion was L. Wilkinson and P. Cook respectively]

150. Since that November 2007 salary adjustment, GM salaries have again risen and at Pocket's December 2008 Management Committee Meeting it was resolved to increase their salaries to their current levels of 9(2)(a)

9(2)(a) It is noted that the minute records that W. Cook and B. Wilkinson abstained from voting. It is not known whether they left the meeting during discussion.

151. Schedule 3 of the "Employment Agreement" sets out 'Remuneration and Benefits' and clause 3 entitles the GM's to

9(2)(a)

152. Given the extremely low level of membership fee, the lack of vetting of membership applicants and the admission of children from the age of 10 years, it will be no problem for the GM's to achieve the first of the two bonus conditions.

153. As to the second condition, there is no definition of "the Club's financial position" and with current expansions there would appear to be little doubt this condition will also be met.

154. In this context, our concern is not so much the quantum of the GM's salaries, other benefits or provision of motor vehicle (even though the movement in those salary levels appear extreme). Nor is it the fact that club members are holding salaried positions for that of itself is not an issue involving 'personal gain' but rather, the need for both appointments – particularly given the family ties and the family dominance on the Management Committee of the Club – and the quantum of bonuses on the basis of targets that do not appear to be too challenging.

155. It is also noteworthy that the following family personnel are on the payroll of Pockets.

Peter Cook
Jenny Cook
Jason Cook
Hazel Cook
Denise Morgan-Wilkinson
Neil Wilkinson
Dianna Wilkinson
Phyllip Wilkinson
Leslie Wilkinson

156. To be fair, there are also many other non-related (as far as we know) staff members employed between the 6 sites, but the placement of family members in a substantial number of employment positions raises the issue of whether there was an 'open' method of staff appointments undertaken on each occasion.

157. We are unaware of any other entity in either the commercial or club context where there are joint co-general managers drawing identical salaries, charged with identical tasks (save for a few minor differences) and – in Pockets case – having access to gaming funds to meet the not insubstantial salaries.

158. If, an depth review by an external party, had established that a need for such a role existed and then someone was appointed to take on that role after the normal

process of external advertising and review of all candidates credentials, our concerns would have been largely allayed.

159. As it is however, we have seen no report or case establishing the need for such a role, been advised of criteria which appear largely drafted to suit the desired candidate and more suited to a club coach type of role, are advised of no attempt to advertise the vacancy, notified of the near identical responsibilities of both General Managers and aware that a committee consisting largely of family members of the appointee making the appointment coupled within the overall context of substantial unfettered funding from class 4 gambling via the application of net proceeds, we view this whole appointment with some scepticism.

160. If this additional salary cost was 'above the line' that is, a component of the costs that reduce gross to net proceeds, it could have been considered and possibly challenged in the "...*actual, reasonable and necessary*..." context. In that the salary is part of net proceeds applied by Pockets it is beyond that legislative scrutiny but we believe that, in the club context, it is an issue of 'personal gain'. Not so much in its nature (that of a salary) but in terms of need and quantum.

Conclusion: While it would appear that the definition of "Club" is drafted in broad terms, we are of the view that features of the requirement for a 'voluntary association' of persons are lacking and elements of 'personal gain' are sufficiently present, to conclude that Pockets does not meet that definition.

Accordingly, the exemption for clubs in section 52 (1) (j) do not apply and inasmuch as the two General Managers of Pockets are also key persons in relation to a class 4 venue licences, the Secretary must refuse to grant/renew Pockets class 4 operator's licence.

Purchase of new Venues.

161. Of particular concern in the review of the financial performance of this Class 4 Operator is the issue of how they funded the necessary capital to acquire new venues.

162. In acquiring the **Shotz premises** in Tokoroa, Pocket purchased the business from a Mr. P.C. Wilkinson, brother of the two General Managers of Pockets. The purchase price consisted of 9(2)(a) for plant, fixtures and fittings, 9(2)(a) for goodwill and 9(2)(a) for stock in trade. A three year lease with two 3 year rights of renewal passes with the business.

163. Vendor finance of 9(2)(a) was provided and the annual

interest on this loan is initially charged to the "8 ball account" and re-couped by way of application of net proceeds from gaming.

164. In this light we would view the interest cost as a non-authorized expense being part of the cost of the purchase of a commercial business and an amount that cannot be offset by the application of net proceeds from gaming.

165. In similar vein the purchase of "**Legends**" in Rotorua – involving \$285,000 of goodwill – constitutes the purchase of a commercial business and the interest on the Mascot loan also needs to be removed from any reimbursement by the application of net proceeds.

166. Pockets also purchased the venue known as "**Rack n Roll**" in Pukekohe, from the NZ Valley Pool Association obtaining vacant possession on 1 August 2008. The purchase price was \$349,576 with a deposit of \$35,000 being paid on 3/6/08, a further \$233,697 on 1/8/08 and the remaining \$124,576 payable by 12 equal monthly instalments of \$11,299.93. It is not known at this stage how the second payment of \$234K was funded.

167. The premises known as "**Lucky Break**" in Glen Eden has also been purchased but actual possession date (sometime after March 2008) is not precisely known. The purchase price was \$206,000 funded by an 8 month interest free loan from the vendor. That loan is repayable in two instalments, the first being an amount of \$106,000 four months after balance date and the remaining \$100,000 eight months after balance date.

168. It will be necessary to ensure that neither the principal or interest costs relating to these property purchases are funded by the application of gaming funds as they, being the purchase of commercial premises, do not qualify as an authorised purpose.

Other Matters:

169. Grants

We have concerns over grants approved by Pockets and in particular \$75,000 given to NZ Valley Pool Association. These funds were approved "to assist with chattel cost at our Eastridge clubrooms". This enabled Valley Pool to purchase a public venue and although might technically be within authorised purposes does have a commercial nature and bring up conflicts of interest issues. As we know the venue did not operate for long under that entity and there has been no follow up or accounting for the chattels that those funds purchased. This was

not a prudent grant decision and shows the insidious relationship between 'Pockets' and 'Valley Pool'.

170. Expenses

Although there is some doubt about the departments ability to question funds applied by clubs to authorised purposes We believe it is essential to take them to task over anything we would find unreasonable or non-compliant from a distributing society's stance. Pockets has very little income from other sources and therefore any costs incurred or funds applied should be actual, reasonable and necessary.

Here we would make mention of

- staff hampers and in excess of \$6500 being spent on an unnecessary cost.
- Player daily allowance - although this is not a large amount it is not actual and for the \$2007/08 year amounted to in excess of \$37K
- travel and accommodation with over \$100K predominantly being repayment of Credit card with few details.
- telephone - it appears the club pay for 10 separate land lines just in Tokoroa and 11 mobile phones with total expenditure of \$30K
- there were also instances of a number of cash advances made from company credit cards and duly paid by pockets. This is an unacceptable process.

171. Another matter that may need mentioning is the fact that Wilkinson/Cook have now purchased the building at 38 Bridge Street and with so many intertwining facets tend to suggest that Pockets is really a family business being conducted for personal gain in the guise of a Club.

This can be supported by the number of family members being paid from Pockets and in most cases on significantly more salary than anyone else employed at the various clubs/venues.

Conclusions and findings.

172. Having completed our review we conclude:

That income and expenses are reasonably recorded.

That there is no evidence of attempts to mislead the Secretary

That in some instances a more accurate allocation of costs between gaming and non gaming activities of Pockets is necessary. This particularly relates to both direct and indirect costs applicable to the gaming aspect of Pocket being appropriately charged against gaming income.

That more care is required to ensure that costs of Pockets that cannot be characterised as payments relating to 'authorised

purposes' are not offset by the net proceeds from class 4 gambling.

That as, in our opinion, the venue known as "Shotz" (Tokoroa) is used mainly for operating gaming machines, a proposal be forwarded by the Secretary to cancel this venue licence.

That Pockets 8 Ball Club Incorporated cannot be considered a 'club' (as that expression is used in the Gambling Act 2003) and that consequently as the two General Managers are Key Persons in respect of each of Pockets separate venues, they be invited to advise why the Secretary should not cancel their class 4 operator's licence.

9(2)(a)

Senior Gambling Inspector.

Date:

9(2)(a)

Investigating Accountant.

Date:

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THE DEPARTMENT OF INTERNAL AFFAIRS

Te Tari Taiwhenua

GM 1217

*Pockets 8-Ball Club
Incorporated*

**Audit Report
22 April 2011**

**Audit Period 1 April 2009
to 31 March 2010**

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

DISCLAIMER

While our audit is carried out in accordance with Department of Internal Affairs' standards, it cannot, and should not, be relied upon to detect every instance of misstatement, fraud, irregularity or inefficiency.

The responsibility for public accountability and the implementation and monitoring of internal and management controls rests with the holder of the class 4 operator's licence.



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ABBREVIATIONS

Act:	Gambling Act 2003
BR:	Gambling (Class 4 Banking) Regulations 2006
DJTR:	Daily Jackpot Turnover Report
EMS:	Electronic Monitoring System
GAA:	Gambling Amendment Act 2005
GMA:	Gaming Machine Analysis
GR:	Gaming Machine Profit
HMR:	Class 4 Game Rules 2006
MS:	Gambling (Harm Prevention & Minimisation) Regulations 2004
NPR:	Minimum Standards
WGMPR:	Gambling (Class 4 Net Proceeds) Regulations 2004
WJSR:	Weekly Gaming Machine Profit Report
	Weekly Jackpot Summary Report

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introduction

Purpose of the audit

The purpose of this audit was to:

- Determine the Society's level of compliance with the Act (and applicable Game Rules & Regulations) and the implementation of the Society's policies and procedures
- Identify areas of non-compliance
- Outline required remedial action for areas of non-compliance

The scope of the audit covers the following key process areas of the Society's class 4 gambling operations:

- Application and/or distribution of net proceeds from class 4 gambling.
- Society costs (including society internal operating costs, venue payments and service provider costs) with a particular emphasis on the Society's ability to minimise costs in order to maximise net proceeds from class 4 gambling.
- Venue compliance (this will involve inspections of each of the Society's related venues). This will include an examination of GMP banking and an assessment of each venue's main non-gambling activity.

The audit also reviewed the Society's performance in respect to those issues that were identified during the course of the Department's previous audit. These were discussed with the Society during the course of meetings held in November 2008 and subsequently in correspondence.

We have undertaken venue inspections at venues licensed to your society. Where there has been non-compliance the reports resulting from those inspections have been sent separately and a summary of the overall venue compliance is commented on in the 'Venue Compliance' section of the report.

Note:

Where immediate action was required we will already have given you the appropriate venue audit report.

Society status and application of net proceeds

The Society's licences to operate class 4 gambling (with the exception of the venue Mavericks Glenfield) were issued on the basis that:

1. it is a "club" (a "voluntary association of persons combined for a purpose other than personal gain");
2. it "owns or leases" the venues within which the gaming machines are located; and
3. those venues are "mainly for the use of club members".

Membership

Society membership is available on demand by any person who wishes to make use of a Society premises. The standard practice is for enquiring potential members to complete the appropriate application and present the required annual subscription of \$5. These details are recorded at the Society's administrative office in Tokoroa and an access card issued to the member for the particular premises at which they requested to join¹⁴. The standard annual subscription has remained the same over several years, with no modifications based on the need to cover operating costs and capital expenditure. Largely this is because the Society's operations can be entirely funded through the proceeds of class 4 gambling. As a result, the annual subscription is simply token. This has the advantage of ensuring that the annual cost of membership is not likely to become a barrier for any members suffering financial hardship. This is largely the rationale for the Society not increasing the subscription rate when it is considered at annual general meetings from year to year.

However, the token cost of membership, combined with the fact that any person, on application (and often with provision of only limited personal details), will be accepted for membership can lead to the view that what is effectively being offered is a form of 'day membership'. There is no apparent 'common bond requirement' for membership of the Society, such as actual interest or active participation in cue-sports. Most of the Society's venues offer little for members beyond class 4 gambling, cue-sports and, in some cases, bar facilities¹⁵. Food service across all venues is extremely limited, certainly in comparison to chartered and cosmopolitan clubs that also often conduct class 4 gambling.

¹⁴ Though access card systems are not operational at all venues. At Glen Eden a receipt of payment is sufficient proof of membership.

¹⁵ It is noted that in recent times organised poker tournaments have become a significant feature of venue activities. At the Rotorua venue in particular, poker tables and information posted relating to tournaments and associated league lists, have become more prominent than cue-sports. These poker activities are conducted through a separate, albeit related, organisation – the New Zealand Poker Club Incorporated. This society, along with various (apparently smaller, regional) affiliated societies associated with particular Society venues, such as Glen Eden, Rotorua and Pukekohe, is controlled by persons associated with the Society. Tournaments are held at Society venues. More recently, several large scale tournaments (conducted at class 3 level) have been held in Tokoroa. There does not appear to be a requirement that poker participants also have to be members of the Society and are open to all interested persons.

register as required by the Incorporated Societies Act 1908 (section 22). Such a register requires, as a minimum, the names, addresses and occupations of members, including the date on which they became a member. This appears to reinforce the fact that membership of the Society is inexpensive, not just for the member, but also for the Society itself. This has a peculiar effect of attendance at meetings, particularly its annual general meeting. Having examined meeting minutes for the audit period, it is astonishing how few members attend them, given the very significant membership claimed by the Society (even making allowance for those members not resident in Tokoroa). Only a very tiny portion of the membership has any role in the management or affairs of the Society or shows any demonstrable interest in them. Those active members remain a small circle around the existing management, who have remained largely unaltered throughout the time the Society has been licensed to conduct Class 4 gambling (in particular, members of the Cook and Wilkinson families in and around Tokoroa). This has two significant effects:

- A lack of oversight of management, of a kind that is essential to maintenance of good corporate governance in most incorporated societies. Without members looking over their shoulders (at least once a year at a general meeting), managers, particularly those who are allowed to remain in the same or similar office year after year, will often operate a society in accordance with their own interests, rather than those of the members generally.
- The absence (or lessening) of a sense of 'belonging' amongst members themselves, or any sense of 'ownership' in the Society. In this regard, in particular, members do not receive periodic (or even annual) newsletters or reports, information about Society affairs or details about management or those who may be contending to become officers. Information to this effect may be posted on notice boards at venues. But this does not appear to have engendered any active interest or participation by members generally. In part this may be explained by the overall very casual nature of membership in the Society, apart from a small Tokoroa based core and others who are actively involved in national and international cue-sport competitions.

Governance & Operations

The issue relating to governance is of particular concern. On two occasions the Society has entered into questionable financial transactions that have involve a significant loss, including the write off of significant amounts of good-will relating to purchased venues (one of which involved a related party vendor). The Society purchased a Rotorua bar/gaming lounge known as "Legends" in 2008. The purchase price was \$350,000, which included \$285,000 as goodwill. A substantial portion of the purchase price (\$200,000) was funded through the provision of vendor finance over a five year term. The Society's stated purpose was to convert Legends into a venue to be used by local members (and to increase membership in the area). It was, however, denied a club liquor license for the premises and it has not since operated a bar.

During the audit period the Society entered into a conditional sale and purchase arrangement to sell the "Pockets Club Rotorua" to Kotuhi Enterprises Limited, an entity associated with Tui Paepoto Kotuhi, who was (during the audit period) an employee of the Society on that venue's payroll. The Department was told that the sale price for the venue was "about" \$5,000, being the value of stock in trade and sundry assets (excluding the gaming machines). The intention of the purchaser appears to be for the venue to again become a public, commercial tavern type operation as it was when it was previously traded as 'Legends'. An application for a liquor licence on that basis was subsequently made. It was explained to the Department that it would be likely that, if the sale proceeded, the

Society would continue to operate gaming machines at the venue in accordance with a venue agreement with the purchaser. The purchase appears to remain conditional.

Gambling Compliance

Presumably the agreed purchase price is based on the fact the venue, as currently operated, is not licensed as a tavern or bar and could not be sold as a going concern as such. However, given the short time that elapsed between the Society's purchase of the venue in 2008 and its decision to sell in 2010, the transaction might fairly be described as a disastrous financial investment by any standard. Particularly given the substantial amount paid for goodwill and the continuing debt associated with the vendor financing. It represents a substantial loss of members' funds. The lack of a club liquor licence, the absence of on-site prepared food (part from a limited supply of snacks) and the relative lack of cue sports tables and activities (in the form of regular league games and tournaments of any significance) means the venue has not operated in any sense as a genuine 'club' type premises. It is noted in this regard that the Rotorua premises does not have a functioning swipe card access system and relies on the vigilance of staff to ensure that only members are able to access the facilities and gaming machines. This must be reflected in the decision by management to sell the premises for only a fraction of what was originally paid for it (presumably also occasioning a write off of remaining goodwill associated with the purchase). If sold, the venue might then be traded commercially as a tavern. The premises might still be frequented and used by persons who identify themselves as members of the Society. But it would not be a club and would likely function as an entirely public premises.

The proposed sale does have the effect of reinforcing the impression derived from an assessment of the venue itself, that this venue does not function in practice as a "club", rather than a gaming machine venue with additional organised poker tournaments and some pool tables. It is questionable what value local members have received from this decision and whether their interests were first considered. Indeed, it is questionable what benefit members received as a result of any of these transactions.

Financial Structure

The Society's main activities are reflected in its annual accounts. Particularly, these are set out in the "8-Ball" account information (pp 5-6). These show income derived from Society related activities and the costs associated with providing member services (i.e. competitions, events etc), administration, management and maintenance of buildings and facilities. They have also been subject to extensive discussions between the Department and the Society (and the Society's accountant) Total Society income is shown as \$282,502. This includes \$203,100 in respect to income derived from hireage of the Society's cue sports tables. However, the costs associated with this are subsidised from the Society's own gaming activities. That is, the equivalent amount is transferred from the Society's gaming revenues into the 8-Ball account as an 'internal distribution'. The Society's expenses over the same period in providing its member services etc are \$2,463,769, amounting to an overall loss of \$2,215,414. This loss was entirely made up in the accounts by \$2,244,449 derived from class 4 gambling (being net proceeds applied rather than distributed).

It is apparent that class 4 gambling forms almost the entire revenue that funds the Society's activities. Even the \$282,502 shown as non-gaming income is mostly derived from a subsidy from gaming revenue. Income from membership subscriptions and other activities are negligible to the point of irrelevance. Although it is not uncommon for gaming revenue to be an important source of income for club entities that have licenses to conduct class 4 gambling, in the case of the Society,

It was these concerns that have led to a number of the Society's venues being denied club liquor licenses on the grounds that the appropriate authority was not satisfied that the premises were, or would be, operated in the nature of a 'club', rather than as a commercial operation. In particular, the Rotorua venue has been without a liquor licence since the Society began operating there (and surrendered the on-liquor licence held by the previous owners).

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Gambling Compliance
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In addition, members receive little in the form of active communications from the Society after they join (and have received their access card). Notices are not posted or delivered to members. Neither are there regular newsletters, notices relating to the timing and location of meetings, availability of annual financial statements, election of members, renewal of subscriptions or general Society business. With the extent of the Society's gaming revenue, it is most surprising that even the most basic communications common with other incorporated societies are so obviously missing. What limited communications that do exist are by way of notices posted in the various Society venues. The Society's constitution was specifically amended in order to avoid any requirement to deliver notices directly to members. It is also apparent that, particularly in respect to older members, contact details held by the Society would be insufficient to enable direct communication in any case. Although there is nothing unlawful about this (apart, perhaps, from failure to maintain membership details in the form required by the Incorporated Societies Act 1908), it does reflect the impression that membership is both very simply to obtain and the Society itself has invested remarkably little in terms of membership relationships and communications. It also appears to be reflected in the obvious lack of interest by members generally in attending general meetings or otherwise participating actively in Society governance or affairs. The Society's records of annual general meetings over the course of the audit period show the same small circle of long time members attending meetings, the same officers being nominated to further terms of office. The management committee remains largely unchanged over time.

The Society's membership management system appears to operate largely around the swipe card access system that is in place at most of its club premises (the exception being Rotorua¹⁶). A person wishing to access one of these premises is promoted to produce an access card. If they indicate they are not a member, they are asked whether they wish to join. If they agree, the pending member fills in an application form and pays the annual membership subscription of \$5.00. This is sent to the Society's administrative centre in Tokoroa, where it is processed. A swipe card is then prepared and sent to the venue at which the new member joined. The member is then contacted, who then has access to that venue for the remainder of the 'membership year'. Upon expiry of that period, the access card will cease to work. In order to continue accessing the premises, the member must renew for the next year by payment of the same annual fee.

The Society's membership records were examined. These appear to be an improvement on previous records examined by the Department (and which were provided to the Liquor Licensing Authority in Rotorua in 2008), which were largely manually written and lacked significant detail. The current records are compiled in spreadsheets. However, the details remain extremely basic, given the membership forms used by the Society. In most cases there is a card number, first name, surname and address. A contact phone number exists for most members at most venues. Though the Pukekohe members lacked any contact details apart from address. There are a surprising number of members for whom even addresses are not recorded. This indicates a very informal means of membership creation. These records are certainly inadequate for the purposes of a membership

¹⁶ It is noted that this venue is to be sold and will cease to be a 'club' premises, to the extent that it ever truly was.

the reliance is almost total (to the point that the exclusion of all other revenue would have no impact on its ability to fund its activities at their current level). The ability of the Society to purchase and/or lease new facilities is also based on gaming revenue. Each of the acquired Society facilities in Glen Eden, Papakura, and Rotorua were existing class 4 venues.

The overall impression is that the principal concern of the Society has been to acquire and control the proceeds of class 4 gambling from associated licensed venues. This has included the acquisition of venues that previously operated as commercial class 4 venues and their 'conversion' into regional facilities. This is clearly reflected in the extent to which the Society's financial existence is dependent so completely on the proceeds of gaming machine operation and the negligible revenue obtained from other sources, such as subscriptions, tournament income and bar sales. The extent to which the Society's affairs are effectively controlled by a small number of active members associated with the Cook and Wilkinson families in Tokoroa, the existence of substantial related party transactions involving those members (including employment and commercial relationships¹⁷), and their ability to control the operations of the Society year after year with little or no input (or oversight) from members generally all leads to a strong inference that the Society's main rationale has become the financial wellbeing of this smaller inner circle, rather than the benefit of members generally.

Based on the foregoing, the Department's principal concern with regard to the Society's structure, management and operations is that whatever genuine and beneficial community objectives that are obtained (in terms of members services – and a particular regard to cue-sports coaching and player development), these are literally dwarfed by the costs of simply maintaining its class 4 gambling operation¹⁸ in comparison (and the obvious financial benefits that the Society managers personally continue to gain from related party transactions – these are discussed further below).

Areas of non-compliance

Application of Net Proceeds

Based on the foregoing, the Department has formed the opinion that the Society ought not to be licensed for class 4 gambling on the basis that it apply, rather than distribute, net proceeds.

Authorised Purpose

The purposes for which the Society may operate the gaming machines are set out on its licence - that is:

1. *"Provision, maintenance and development of club buildings, furniture, fittings, equipment and grounds, funds for building extensions, renovations or construction of new premises where the principal purpose of the premises is for direct use by society members. Excludes purchase of buildings or property for commercial or investment purposes. Excludes bar areas. Includes payment of the Club's mortgage, rates, insurance, general administration and security costs.*

¹⁷ For example, including the purchase of the 'Shotz' venue in Tokoroa, the sale of the 'Legends' venue in Rotorua and the expansion of the Bridge Street venue).

¹⁸ These costs are discussed further below.

2. Assistance to sporting adjuncts within the Club through provision of uniforms, equipment, premises and actual and reasonable expenses to travel to and compete in tournaments with kindred groups.
3. Any charitable, cultural purpose or any other purpose that is beneficial to the community or a section of it.

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The Department has previously discussed with the Society and its accountant problems with the way in which it has been applying net proceeds. In effect, the entire loss incurred by the Society as a result of its costs exceeding its non-gaming revenue has been made good by the application of net proceeds. This has been without concern for whether the particular line item costs are within the authorised purpose(s) as stated on the licence. The blanket attribution of gaming net proceeds to the operating costs associated with the entirety of the Society's activities fails to distinguish between those which are non-commercial in nature and those which are operated commercially. In the later case, bar facilities can not be funded or associated costs reimbursed from gambling net proceeds. This is a common feature of club-type societies' authorised purpose statements. The Society has previously utilised net proceeds as if all its activities, regardless of their nature, are authorised purposes. To the extent that these activities are commercial in nature, net proceeds have been misapplied. It is noted, however, that following discussions with the Department, the Society has agreed to alter its accounting practices and to more clearly ascribe net proceeds to clearly identified authorised purposes. Though it is still questionable whether the Society's alternate sources of income are sufficient to meet the costs of those activities that are not authorised purposes.

Minimising costs & Maximising Net Proceeds

Areas of non-compliance

The Society's arrangements with respect to management and employment were examined. This is because its financial accounts for the audit period disclose that salaries and wages for the period were very substantial.

During the audit period the Society paid a total of \$757,242 in wages & salaries specifically in relation to its gaming machine operations (i.e. the cost of labour apportioned to actual gaming machine related activities). A further \$81,367 in wages and salaries is provided for in respect to the Shotz Bar venue in Tokoroa and \$985,944 in respect to general "8-Ball" activities. For the financial year the total is \$1.8 million. This does not include the Glen Eden venue, which is managed on the Society's behalf by a separate entity associated with the previous owner/operator of the venue, Wynn Belmont (MRJWW Limited). The annual 'management fee' associated with this arrangement was \$254,808. The Society does not itself employ staff at this venue. All labour costs are paid for by MRJWW out of its fee. Any employees at the venue are contracted to MRJWW Limited.

During the audit period wage and salary costs were approaching something close to \$2 million in total (assuming a reasonable proportion of the MRJWW fee is attributed to associated labour at the Glen Eden venue).

It is of some concern to the Department, particularly in light of the Society's governance arrangements, that the principal, and most highly paid, employees are also officers of the Society

and related parties. Particularly members of the Cook and Wilkinson families. Most of the committee members are also employed by the Society in senior positions. Other family members are employed at various venues. These related party transactions are disclosed in the accounts and are stated to be on normal or commercial terms and conditions.

Two persons previously associated with Pukekohe Rack n Roll (and New Zealand Valley Pool Association), James Johns and John Pera, are both described in their employment contracts as "North Island Area Manager". The contracts are broadly similar, including their job descriptions (albeit these are worded very generally). Both these positions relate specifically to the Pukekohe, Glen Eden and Rotorua venues, even though each of these venues during the audit period had separate venue managers employed or contracted (Teena Johns in respect to Pukekohe, Wynn Belmont in respect to Glen Eden, via MRJWW, and Mathew McInnes at Rotorua). In addition, Brendan Demchy (also previously associated with New Zealand Valley Pool Association and until recently proprietor of another class 4 gambling venue, The Race Place in Otara) is separately contracted specifically as 'compliance auditor' (which includes compliance with gambling related legislation and regulations).

In addition to these senior management positions, the Society employs a general manager and a chief financial manager (Wendy Cook and Bruce Wilkinson respectively). Previous to the audit period both were described as general managers.

Despite having a well remunerated chief financial officers position, for the purposes of conducting the present audit the Department's queries regarding the Society's accounts were all referred to its accountants.

The Society appears to be very management top heavy for its size (albeit it claims a very significant membership, much of this membership is casually involved in activities at best). Apart from the management committee itself, the Society employs at significant cost a general manager, chief financial manager, two area managers, venue managers at each facility, a management services contractor for the Glen Eden venue and a separate compliance auditor (Mr Demchy). The Society has also contracted the services of a separate gaming compliance service provider, Mr Martin Tregonning (apparently with particular reference to the Mavericks Glenfield venue).

Under these are a small group of administrative staff and general venue service staff. It is questionable whether the two North Island Area Managers add any significant value to the Society's overall management, given the extent of its operations and the level of tournament activity being conducted. All of the individual venue managers spoken to during the course of the audit were knowledgeable concerning general compliance issues and were also closely involved with member activities and tournament operations at their venues.

The Department believes that the Society's current employment arrangements, even if confined simply to those labour costs attributed to actual gaming machine operations) are unreasonable and unnecessary for its size. It is questionable whether the services of contracted compliance auditors or advisors, in the persons of messers Demchy and Tregonning, add any significant value to the Society's operations, given the roles of senior management and venue managers.

BANKING PROCESS

The Society operates a number of bank accounts with ANZ. The 'gaming account' (into which gaming machine proceeds are banked from venues and subsequently applied and/or distributed) is numbered 01-0461-0047389-03 ('03 account'). In addition, separate accounts (usually referred to as housekeeping accounts) are operated in respect of each gaming venue. The housekeeping accounts are generally used to accumulate gaming proceeds from a particular venue over the course of a week. Weekly transfers are made into the 03 account.

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During the audit period there were occasions when transfers from several of the 'housekeeping' accounts associated with particular venues were not made into the 03 gaming account within five working days of the associated WVARs. Although there were no arrears of gaming proceeds not transferred or accumulated in the housekeeping accounts. Failure to transfer GMP from every venue into the 03 account, being the designated gaming account, must occur within the required period. This includes transfers from sub accounts or other associated accounts operated by the Society, even if their purpose is exclusively to hold and accumulate GMP from particular venues over the course of a weekly period. A number of gaming societies operate venue accounts in this manner. However, this does not detract from the fact that the funds are under the control of the Society at all times, even when in the housekeeping accounts.

The one venue that operates on an entirely commercial basis, Mavericks Glenfield, did bank GMP into the Society's gaming account within prescribed timeframes.

Venue Compliance

The Society's licences to operate class 4 gambling (with the exception of the venue Mavericks Glenfield) were issued on the basis that:

4. it is a "club" (a "voluntary association of persons combined for a purpose other than personal gain"),
5. it "owns or leases" the venues within which the gaming machines are located, and
6. those venues are "mainly for the use of club members".

On that basis, the Society is not required to enter into a venue agreement in respect of those venues (see section 65(3)). By comparison, its operations at Mavericks Glenfield are a conventional arrangement with a third party venue owner that requires a venue agreement.

The Society has class 4 gambling venue licences in respect to five locations that it owns or leases and for which no venue licenses have been entered into (because the Society is both gambling operator and venue operator):

1. Pockets 8-Ball Club 38 Bridge Street, Tokoroa GMV16.
2. Pockets 8-Ball Club (previously known as 'Shotz Bar') 42 Mannering Street, Tokoroa GMV1598.

3. Pockets 8-Ball Club Rotorua (previously known as 'Legends Bar') 1122 Hinemoa Street, Rotorua GMV1271.
4. Pockets 8-Ball Club Glen Eden (previously known as 'Lucky Break'), 200 West Coast Road, Glen Eden, Auckland GMV413.
5. Pockets 8-Ball Club Pukekohe (previously known as 'Rack n Roll Pukekohe') 21 Massey Road, Pukekohe GMV1733.

The Society also operates a third location on Bridge Street in Tokoroa. This venue is where the Society's administration is based and is a significant pool-sports venue. It is not licensed for the operation of gaming machines.

Summary of venue inspections

Inspections were carried out at each of the Club's associated class 4 gambling venues. Overall, the gaming machine operations at the various venues were well organised and compliant with legislative requirements.

All of the venues except Rotorua had functioning access card systems. This system limits the potential for non-members accessing the Society's gaming machines.

The access card system has not been functioning at the Rotorua venue for some time. This is of some concern given that the principal entrance into the venue is very close to the gaming area. By contrast, the area containing pool and poker tables are in a separate area that can only be accessed by walking past the gaming area (and what used to be the bar) and through a short corridor. The gaming machines are therefore the most accessible activity at the venue. The Department is particular concern by the nature of this venue. It is one of the Society's most recently acquired and has very limited non-gaming activity. Poker has become a significant part of venue's operations, with related paraphernalia being prominent in the non-gaming area. Cue-sports are not a significant feature compared to other Society venues like Pukekohe and Glen Eden. The intention of the Society to sell the venue (with the result that it would again become a commercial premises with an on-liquor licence) reinforces this impression. If the venue had a substantial and committed membership there would be no good cause for the Society to contemplate selling the venue so soon after its acquisition (and at such a substantial loss). It would also have been expected that local members would have been fully consulted. The fact that the venue appears to function predominantly as a gaming venue is also apparent from the fact that, once the Society acquired the venue, it began operating the gaming machines there even before the required renovations had been completed that would allow its cue-sports activities to commence.

CONCLUSION

The Department's primary concerns are that the Society itself only functions to a limited and somewhat artificial extent as a 'club' type society. Its membership, though apparently large, is comprised in the main of casual users of the Society's venue facilities (with a relatively limited proportion involved with organised cue-sports tournaments). Membership is obtained easily and cheaply through payment of a nominal sum (which remains unchanged year by year). The principal

means of membership identification is through the access card system, which allows access to a particular associated venue. Membership renewal is also largely organised on the basis of the access card system (as opposed to direct contact with members). Significant communications with members occur through the medium of notice boards. Membership lists are not complete and often do not include full or useful contact details. The revenue derived by the Society from its membership is negligible, to the point that the proceeds from class 4 gambling forms fully 95% of total income. In its accounts for the audit period, the bulk of the apparent non gaming income was itself a subsidy for table hire derived from net proceeds. Meeting records and minutes do not disclose any real participation by members generally (to any significant degree) in the Society's affairs, as opposed to simple use of facilities. The Society's management committee (and its group of senior employed managers) has remained largely unaltered year by year. Given annual general meetings are held in Tokoroa, the ability of members in other centres, such as Pukekohe, Glen Eden and Rotorua, to actively participate in Society affairs is limited. As it expanded its operations outside of Tokoroa, the Society chose not to make use of separately incorporated 'branch' societies that might have functioned as self-governing local clubs under the oversight of the Tokoroa based organisation. This would have better allowed for local participation in governance and the fostering of a genuine club type operation.

The Department does accept that the Society's operations do have (and are intended to have) a beneficial and useful community outcome, particularly in Tokoroa, where it is based. At its principal Bridge Street premises it operates a substantial cue-sports venue. Tournaments and competitive cue-sports games are held. There is coaching activity, particularly to benefit junior players. The Society is able to provide facilities and resources that enable talented new cue-sport enthusiasts to develop their skills and achieve success. In areas where the Society operates, this can have an associated general social benefit of helping at risk youth. The Society's senior management made a particular reference to this. Both were proud that opportunities were being created that did not previously exist for talented young players. There is also a substantial level of casual game play amongst members using the Society's venues.

However, it is questionable whether these achievements to date really justify the very substantial application of class 4 gambling net proceeds being obtained from five licensed gaming machine venues. Gaming revenues were \$5.7 million in the financial year ended March 2009 and \$5.9 million in 2010. For both years net proceeds were \$2.4 million

The Department is also concerned that the way the Society operates means that a substantial benefit is being derived by the Cook and Wilkinson families in Tokoroa. For the size of the Society, there is a substantial expenditure on management where the managers are themselves related parties (being elected officers).

The Society's application of net proceeds has not properly taken into account the limitations associated with its authorised purpose statement. The bulk of net proceeds have been used to make good the substantial excess of general costs over non-gaming income. This has been discussed with the Society and its accountant.

GCG Advisory Group - Request for Consideration & Advice

TO: GCG Advisory Group / [REDACTED]
CC:
FROM: [REDACTED] Northern Regional Manager
DATE: 10 April 2012

TITLE: Pockets 8-Ball Club Inc – Audit Result and Options

1. Background

Pockets 8-Ball Club Incorporated (Society) is a licensed class 4 gambling operator. It is licensed on the basis that it may apply, rather than distribute, its net proceeds. In this sense it is characterised as a 'club' type society. However, unlike other such societies, it operates gaming machines at five different venues¹⁹ (four of which are 'clubrooms' owned by the Society itself and one is a separate commercial premises) ←

Audit History

The most recent (and only) audit of the Society covered the period 1 April 2009 to 31 March 2010. An audit report was produced dated 22 April 2011. A response to the audit was received 21 November 2011. Although this audit is somewhat historic, the principal matters of concern relate to the nature of the Society, not to events occurring with a particular timeframe.

The audit report criticised the Society in relation to:

- Its governance and operating structure which were such that the Secretary was concerned the Society was not a non-commercial operation. The principal matters referred to were (1) close control by a small number of persons who are both officers of the Society and employed as its senior management²⁰, (2) related party transactions between the Society and such persons in an environment in which there is no effective membership oversight or provision of information to members²¹, (3) the minimal requirements for membership required by the society²².

¹⁹ During the most recent audit the Society also operated at a sixth venue in Rotorua.

²⁰ Most of who are related, being members or associates of the Cook-Wilkinson family in Tokoroa. It is noted that the same people are routinely re-elected to their positions. Current management has been in place since the Society began operating gaming machines.

²¹ Including the purchase of a venue in Tokoroa from a family member where the purchase price included a substantial goodwill element that was subsequently written off.

²² The annual membership fee is \$5 and has remained such for many years. The society's income from membership subscriptions is negligible compared to gaming proceeds. As membership includes entitlement to free pool games, the fee is the equivalent of a couple of free games.

- The salaries being paid to middle and senior management. In particular, the apparent duplication of management roles. In addition to Wendy Cook (general manager) and Bruce Wilkinson (finance manager), the Club employed two 'national managers' in Pukekohe²³ as well as outside compliance consultants and venue managers. Overall, the Society had far too many managers for its size and extent of its cuesport operations. In particular, the Department saw no rationale for the national managers located in Pukekohe.
- In relation to several of its venues (Pukekohe, Rotorua), the lack of facilities at venues. Several of these venues do not have bars because of the refusal by the liquor licensing authority to grant 'club' liquor licenses (see below). None of the venues has an on-site bistro / restaurant style food service for members.

Audit Response

An audit response was filed on behalf of the Society by its lawyer, Jarrod True. This is substantial and comprised a number of large bound volumes. The response generally denies the Department's statements regarding the bona fides of the Society. Much of the response is composed of numerous testimonials by members, several provided by outside organisations and public authorities (mainly in the Tokoroa area), the outcome of an internal survey conducted amongst members as to their level of satisfaction with Society management. Generally, the Society denies any allegation that it does not function as a bona fide club, states that the persistence of its management and governance is because members are satisfied with the way the Society is run, rather than a lack of democracy.

The society claims that membership fees are kept minimal to ensure that a substantial number of people can continue to afford membership and participate in club affairs. They point to the fact that most RSA and chartered club type organisations have been holding membership dues steady, or decreasing them, in response to declining membership and the impact of the overall economic climate.

In response to the audit report the Society has conducted a review of management and several positions were subsequently terminated. Compliance consultancy arrangements have not been renewed. The two national managers have been made redundant.

Liquor Licensing History

In 2008 the Society was denied applications for 'club' liquor licenses at two of its venues- - Rotorua and Pukekohe. This was on the basis that the Liquor Licensing Authority was not satisfied that the Society was in fact a non-commercial operation. The Authority found that the guiding purpose of the Society's acquisitions of the two venues was to capture the gaming machine revenue with them. It noted that, outside of its original premises on Mannering Street, Tokoroa, each venue it has acquired

²³ There were persons previously associated with the management of New Zealand Valley Pool Association.

has been a licensed class 4 gambling venue. The Authority also noted the significance of gaming revenue to the Society's operations in comparison to other form of income.

The Society chose not to pursue an appeal from that decision. A Departmental representative was present at the hearing.

2. Commentary

The Society is quite unlike any other currently operating. As such it presents a unique challenge. Though there is an obvious risk that others may try to follow in its footsteps if it is seen to be consistent with the Act and regulations²⁴. The ability to apply, rather than distribute, the net proceeds from numerous gaming venues has obvious attractions.

The principal difficulty facing the Department is to determine what kind of 'template' the Society should be compared to or examined against. The laws applying to incorporated societies and clubs in general are non-prescriptive. Although some element of democracy is clearly implied, how societies provide for it is up to them. As their solicitor has pointed out, they have not broken any laws. An active membership that has a sense of ownership in their society (and a readiness to question governance) may be a desirable attribute, but is not mandatory.

Nevertheless, there are obvious signs of danger. Despite its claim for a large membership (numbered in the thousands across the various venues) the control and running of the society has been a monopoly of a small clique. There are many related party transactions, with most of the officers employed by the Society in some managerial capacity. Family members are employed at venues or as cuesport coaching staff. There has been at least one substantial related party transaction entered into on terms that were un-commercial and resulted in a significant loss through a write off of goodwill. Communications with members is minimal. So is the provision of information²⁵.

The Department's concern, mirroring that of the Liquor Licensing Authority, is that despite the community good that the Society may do²⁶, the operation is currently funded almost entirely from proceeds of class 4 gambling, such gambling is not merely incidental to the Society's activities, the Society operates in a way in which the continued dominance of a small governing clique is assured and that related party transactions result in the enrichment of that clique. As a result, serious consideration must be given to the fact that the Society's real purposes are not entirely non-commercial.

²⁴ Though to date none have attempted it. Possibly because it is still seen as a test case that might still be subject to compliance reaction.

²⁵ The Society's constitution was amended to provide that information can be provided by way of notices posted in venues rather than being posted to members.

²⁶ Particularly in Tokoroa.

3. Issue(s) for GCG Advisory Group Consideration:

The principal issue for the Advisory Group is whether, based on the audit and related information (such as that derived from liquor licensing reviews of the Club), there are sufficient grounds for the Department to be satisfied that the Club ought to continue to be licensed on the basis that it applies rather than distributes its net proceeds from class 4 gambling.

4. Regulatory and Legal Risks

There are significant regulatory risks involved. The Club is a direct challenge to the boundary between what is an 'application' and what is a 'distribution' type society. If the Club was licensed on the basis that it distributed net proceeds, the concerns over its status and operations would largely disappear. The Department's approach in relation to the Club will have implications in relation to future applications by societies for a class 4 operators' licence based on application of net proceeds.

There have been several other instances where 'club type' societies that operate gaming machines at their own premises have sought and obtained licences to operate additional machines at public venues. However these have been small scale and not been particularly problematical. The Club's main points of difference are the number of venues it operates at (six) and the fact that only one is currently treated as a separate commercial premises (Mavericks in Glenfield). The other five venues, despite their geographic dislocation, are all licensed on the basis that they are 'clubrooms' (non-commercial premises principally for the benefit of club members).

5. Public Interest

It may be anticipated that there will be some local public interest in the outcome in the Tokoroa / South Waikato area given the prominence of the Society in that area. The Society, together with the Wilkinson – Cook family is well established there. Members of the family have held public office and appear to have the confidence of some local public officials. The mayor of Tokoroa, Neil Sinclair, has provided a testimonial endorsing the Club and its aims.

Outside of Tokoroa there is not likely to be significant public interest. Pockets related venues are located in Glen Eden and Pukekohe. The Society intends to resume operations in Rotorua after a hiatus when their venue there was sold and operated as a commercial premises by a related person. The Club's presence in Rotorua is opposed by local council liquor licensing inspectors.

6. Financial Risks and Impact Assessment

There are minimal or no financial risks. However, if the Department was to take compliance action (particularly in relation to a licence cancellation) the Society can almost certainly be expected to appeal and/or apply for a judicial review. The Society is well resourced for litigation.

7. Options

Proposal to Not Renew or Cancel Class 4 Operators' Licence

One option is to propose to not renew the Society's licences. This would be on the basis that the Department does not believe the Society meets the threshold requirement to lawfully conduct class 4 gambling – that its primary purposes are (or have become) commercial in nature.

There are difficulties with this. The Society may well be able to establish that its activities some within the ambit of 'authorised purposes' under the Act. The audit accepted that the Society does carry out activities that are clearly beneficial to the community, at least in Tokoroa. The problem is that the scale of the Society's class 4 gambling operation is out of proportion with the community outcomes and membership benefits it provides.

"Amendment" of Class 4 Operators' Licence

Another option may be to alter the basis on which the Society may conduct class 4 gambling. If the principal concern is the bona fides of the Society as a 'club', and compliance concerns are not seen as being significant enough to warrant a proposal to cancel, then an alternative may be to allow the Society to continue to be a class 4 gambling operator at its currently licensed venues but on the basis that it is required to mainly distribute net proceeds. This would not necessarily prevent some level of application of funds. Particularly in respect to those club like activities that occur at the Society's principal premises in Tokoroa. The Society would still be required to distribute the bulk of its net proceeds to outside community and/or charitable purposes. This might also alleviate some of the criticism levelled at the Society that it ties up too much GMP internally to the detriment of the local community (i.e. the community would now receive the benefit of the net proceeds in much the same way they would if the venues were operated by any other society.

This option might also act to restrict the potential for other 'club-type' organisations to arrange acquire commercial premises in future and operate them in the nature of clubrooms in order to increase application net proceeds (i.e. to copy Pockets). If a club society was to expand its class 4 gambling into commercial type venues with only a faint veneer of club activities then it could do so, but at a cost of having to distribute rather than apply the net proceeds derived therefrom.

Status Quo

If the Society is allowed to continue operating as its has there is a risk that it might continue to expand its operations into new 'clubrooms'. Although there has been no indication yet of any further venues being acquired.

Memo

To	Gambling Compliance Team Leader, Auckland
Copies	Accountant, Gambling Licensing
From	9(2)(a)
Date	16 January 2014
Subject	Pockets 8-Ball Club Inc

The findings and outcome of the 2011 Pockets 8 Ball Club compliance audit are set out in the attached audit report and memoranda. These relate to the audit findings themselves and the Department's consideration on how to proceed to implement those findings in terms of a regulatory response.

The background and discussion is set out in the attached memoranda. The principal concerns of the Department have been:

1. Governance and ongoing control of the Club by a small closed group of persons.
2. Related party commercial arrangements with those persons or others related to them (including employment arrangements). The management structure was seen as being inflated and costly with managers having ill-defined and overlapping roles. Salary costs associated with employment of Club officers in management roles were very substantial.
3. Suitability of several venues as 'club' rather than public premises (in particular the Rotorua club venue which initially traded as a commercial operation, was taken over by Pockets and then subsequently sold to a related party and traded once more as a public premises)¹.
4. Substantial reliance of the Club on its class 4 gambling revenue to fund its entire operation (together with a lack of any substantive financial support from members).
5. The token nature of club membership being similar to 'day membership' arrangements and the very small number of members (in comparison to the whole) who are actively involved in cuesports activities beyond purely social use of club facilities.

In response to the Department's report the Club filed substantial submissions principally contending that it is a genuine club with a genuine active membership. These included:

¹ Ref also liquor licensing decisions declining club liquor licences for this venue and for another in Pukekohe.

- A review of governance and employment relationships. This resulted in several redundancies among managers whose positions appeared superficial (these individuals were persons who had previously been involved with the Pukekohe Valley Pool Association)
- A substantial paper survey conducted amongst members in various locations intended to support the view that the Club has an active and 'content' active membership.
- Evidence of Club participation at various cuesport events in New Zealand and abroad.

The changes to the Club's management structure did address some of the Department's concern over unnecessary levels of management. However, the principal problem of governance remains. The Club remains under the control of the same officers year after year who are employed by themselves in senior management positions. There is no indication of any substantive involvement by members in Club affairs, particularly those members associated with Club premises outside of Tokoroa².

Following consideration of the Club's submissions to the audit report, the Department considered the following options:

- Proposal to cancel or not-renew the Club's operator's licence on the ground that the Department was not satisfied that the Club existed purely or principally for non-commercial purposes.
- Proposal to add a special licence condition altering the Club's authorised purpose(s) to a 'distribution' type society rather than an 'application' one. This would allow the Club to continue to operate gaming machines at its premises but require it to distribute the bulk of its net proceeds.

The proposal to cancel or not-renew the Club's licenses was viewed as problematic due to the difficulty in establishing (through sufficient evidence) that the Club did not have any genuine non-commercial purposes and activities. It was believed that there was a non-commercial core activity being conducted at the Club's principal Bridge Street premises in Tokoroa (its one premises without gaming machines) but that its subsequent expansion into other venues had been motivated principally (or entirely) by their track record as established class 4 gambling venues. The result has been a transformation from a cuesports club into a large scale class 4 gambling operation whilst maintaining an increasingly superficial club appearance.

9(2)(h)

Next Steps

In terms of where we go from here, given the length of time since the audit's evidence and data was collected, it is suggested:

- Further and more recent information be examined regarding governance, control and management arrangements within the Club and its individual venues. In particular

² The Club did indicate a willingness to involve regional 'delegates' at Board level.

minutes of all management and governance committee meetings and all annual general meetings of members. This will indicate whether there has been any substantial reform in response to the Department's audit concerns. Particular emphasis needs to be put on decisions relating to employment venue arrangements³

- The over-reliance by the Club on its class 4 gambling revenues (in comparison to membership support) be re-examined compared to the prior audit period. The Gambling Amendment Bill will, if passed, require all 'application' type societies to show that class 4 gambling is merely 'ancillary' to their non-gambling and non-commercial club activities. A difficulty at the moment is a lack of statutory clarity around how 'apply' and 'distribute' are distinguished in practice.
- The continuing extent of cuesports and other non-gambling activities at the Club's venues (particularly Rotorua, Pukekohe, and Glen Eden) are re-examined.
- The Department look at the extent of (and participation of members in) organised cuesports activities at a Club level both regionally and nationally. Also, the relationship between the Club and national cuesports governing bodies.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

³ The purported sale of the Rotorua venue and its subsequent re-acquisition as a Club venue would be an interesting topic of examination.

Transitional Outcomes & Advisory Board Paper

Title: Pockets 8 Ball / **Out of scope** – Return to community from public venues

Business Unit: Gambling Compliance

Date: 15 June 2015

Key issues

Both Pockets 8 Ball (“Pockets”) and **Out of scope** are clubs that each operate gaming machines in public venues, but predominantly apply their total gaming machine profit (“gmp”) within their clubs. Should they be required to distribute a percentage of the net proceeds from the public venues, back to the community in the geographic areas of those venues?

What are you asking TOAB to provide?

A decision on whether action should be taken to require both Pockets and **Out of scope** to distribute a % of net proceeds from their public venues, to the geographic areas of those venues.
If so, the means by which this can be achieved.

Timeframe

Author

Name	Position	Direct phone line	Suggested 1 st contact
9(2)(a)	Team Leader	9(2)(a)	✓
	Senior Gambling Inspector	9(2)(a)	
Return to	9(2)(a), Hamilton Gambling Compliance		
LCS references	2006858 and 2007212		

Sign-off (Team Leader level)

Name	Position	Direct phone line	Suggested 1 st contact
9(2)(a)	Team Leader	9(2)(a)	✓

Purpose

- To make a decision as to whether both Pockets and **Out of scope** should be required to distribute a % of the net proceeds from their public venues, to the community in the area of those venues. If a decision is made to require them to do so, what process should be used for that purpose.

Executive summary

2. Pockets and **Out of scope** are both clubs that operate gaming machines in a number of venues. As well as operating machines in club premises, each society operates machines in one public venue in Auckland. Predominantly, neither society distributes any of their gmp outside of their club networks, with nearly all gmp applied to their clubs. None of their club venues are in the geographic areas in which the public venues are located.

Their gmp makes up the majority of income of both operators.

Both Pockets and **Out of scope** are currently the subject of an audit by the Department. Issues have been identified with the spending of gmp by the general manager of Pockets, on personal items not covered in the society's authorised purpose. No such issues have been identified in the **Out of scope** audit. Both audits are near completion with draft reports currently being completed.

Both societies are awaiting the renewal of their class 4 operator's licences.

The return of net proceeds to the community in the area of generation, is not something currently covered by legislation, but has been signalled as a matter of importance by the Department, with work in this area being done by Sector Initiatives and Op Policy. The passing of the No. 3 Bill will allow the Department to create regulations to direct this to happen. This is likely to be 12 – 18 months from now.

9(2)(h)

Decision required	Response
<p>1. Whether both Pockets and Out of scope should be required to distribute a % of the net proceeds from their public venues, to the community in the area of those venues.</p> <p>2. If a decision is made to require them to do so, what process should be used to reach that outcome</p>	<p>Yes / No</p> <p>Option 1, 2, or 3</p>
Advice required	Response
<p>1. If a decision is made to require them to do so, what % should they be required to return.</p>	<p>___ %</p>

Problem definition

3. None of the net proceeds from Pockets public venue Mavericks, Glenfield, or the **Out of scope** **Out of scope**, benefits the community in the geographic areas in which it is generated, as it is applied to the clubs, which are not situated in the areas of the public venues.

Background

- 4.1 Pockets 8 Ball is the holder of a class 4 operator's licence. It currently operates gaming machines in three class 4 venues. Two of these, including their 'head office,' are club premises situated in Tokoroa. The main purpose of the clubs is the playing of pool and like table games.

Their third venue is a public tavern, Mavericks, situated in the Glenfield mall, Auckland. A number of years ago Pockets operated machines at six venues. Three of these venues have now gone to Masse Inc. For the financial year ending April 2014, income from gaming machines amounted to approximately \$4.5m. This was when they operated five venues and was over 90% of the total income of Pockets.

Mavericks currently has an average weekly gmp of \$31k (approx. \$1.16m per year), of which none is going back into the Glenfield community.

Pockets applies the net proceeds from gambling to their authorised purpose. They do not make any external grants to other community groups. Historically, this has seen them struggle to legitimately apply such a large amount of proceeds, with audit results identifying extravagance in their spending on themselves. They also regularly hold large amounts of undistributed net proceeds. There has also been concerns over their practice of having no controls over the entry to their club premises, and charging 'members' \$5 for an annual membership to the clubs allowing them to play the gaming machines and having no other involvement in club activities.

In the current audit, it has again been established that there has been little or no control over the spending of certain highly placed club official/s, with amounts of gmp having been spent on accommodation and gambling at the SkyCity casinos, and remuneration of said persons being considered as excessive and unreasonable.

Out of scope

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Out of scope

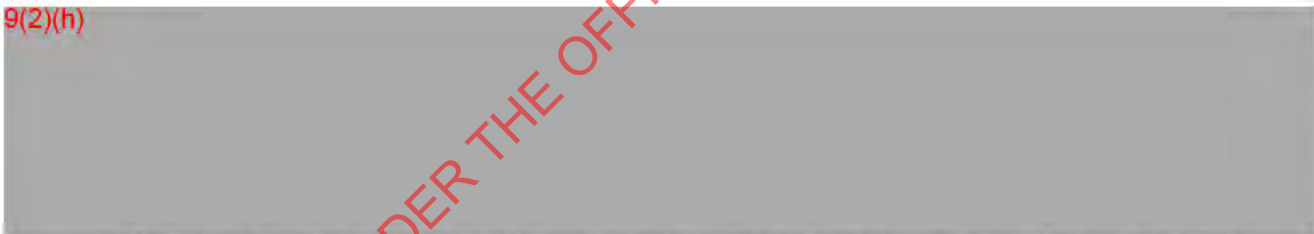


Consultation

9(2)(h)



9(2)(h)



This has been discussed with Operation Policy and indications are that the making of any regulations post the No 3 Bill passing would be 12 – 18 months away.

Options

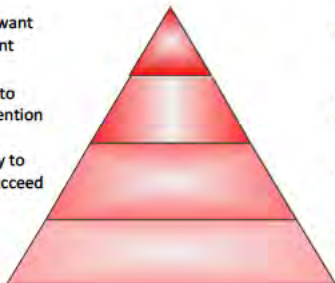
Behaviour/Attitude

We believe that you do not want to comply or wilfully negligent

We believe you do not want to comply but will if we pay attention

We believe you genuinely try to comply but do not always succeed

We believe you are willing to comply



Compliance

We use the full force of the law

We deter non-compliance through detection

We assist you to comply

We make compliance as simple & straightforward as possible

How we might respond

Prosecution, licence suspension or cancellation, fine

Auditing, intel, inspections, monitoring, formal warnings, infringement notices

Guidance, information, templates, codes of practice, simplified compliance & notices

Providing guidance, online services, longer licensing, compliance cooperation agreements & collaborative initiatives

Options	Level of response	Pro	Con
1. Refuse to renew the current licences and allow Pockets and Out of scope to reapply on the basis that net proceeds from public venues will be mainly distributed.	Non-renewal process including proposal etc.	Reconsideration of their authorised purposes. Could reach negotiated outcome post the non-renewal proposal	Lengthy process through proposal stage. Possible GC appeal
2. Await the making of regulations post the No 3 Bill.	Status quo including relicensing until new regulations in place	May have current legislative backing	Time involved in awaiting legislation changes
3. Propose to add licence condition as part of current relicensing and audit process, requiring them to mainly distribute the net proceeds from their public venues. PREFERRED OPTION	Proposal to add condition to licences on renewal.	Reconsideration of their authorised purposes. Could reach negotiated outcome post the proposal to add a licence condition	Lengthy process through proposal stage. Possible GC appeal
4. Leave matters as they are enabling them to use the gmp from their public venues for their current club authorised purposes.	Status quo	Will avoid lengthy proposal and possible Gambling Commission involvement	Does not return any net proceeds to the area in which it is generated

Risks

1. New regulations may only apply to societies that mainly distribute net proceeds, and therefore not cover applying societies operating in public venues.
2. The non-compliance identified in the current Pockets audit, may result in some form of sanction action, which would make a decision on this matter irrelevant in respect to Pockets.
3. The likely involvement of an appeal if a decision is made to enforce the distribution of a % of their net proceeds.

Decisions required

Decision required	Response
1. Whether both Pockets and Out of scope should be required to distribute a % of the net proceeds from their public venues, to the community in the area of those venues.	Yes / No
2. If a decision is made to require them to do so, what process should be used to reach that outcome	Option 1, 2, or 3

<i>Advice required</i>	<i>Response</i>
1. If a decision is made to require them to do so, what % should they be required to return.	___ %

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Appendix A:

9(2)(h)

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

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Outcomes & Advisory Board Paper

Title: Pockets 8 Ball Incorporated - OAB paper to consider Suitability/Renewal issues
Business Unit: Gambling Compliance
Date: 29 July 2016

Key issues
<ul style="list-style-type: none"> Pockets 8 Ball Inc. (Pockets) is due to have their Class 4 operators licence renewed. Additionally, they have made application to the Minister of Internal Affairs to merge with two clubs who operate Class 4 gaming machines, the Olde Establishment, and Putaruru District Services Memorial Club. A 2014 Class 4 audit of Pockets found concerns regarding the use of net proceeds by Wendy Cook (and therefore Pockets as an entity). Tacit approval was given by the Club in allowing unchecked use of gaming money by its General Manager Wendy Cook. The Department has raised concerns with Pockets over its governance and management for several years. The Department has previously not taken enforcement action, and accepted remedial changes made, but recent concerns raised as part of the 2014 audit require further consideration.

What are you asking OAB to provide?	Timeframe
<ul style="list-style-type: none"> In light of continued concerns around the governance and management of Pockets, in particular the practices of General Manager Wendy Cook, a decision is required as to what action should be taken by the Department. Endorse the position that Pockets can be considered a club at this current time. 	

Author

Name	Position	Direct phone line	Suggested 1 st contact
9(2)(a)	Team Leader	9(2)(a)	✓
	Senior Gambling Inspector		

Return to	9(2)(a), Hamilton Gambling Compliance
WR references	

Sign-off (Team Leader level)

Name	Position	Direct phone line	Suggested 1 st contact
9(2)(a)	Team Leader	9(2)(a)	✓

Purpose

- To determine what action / approach the Department should take given the concerns identified as part of the 2014 audit of Pockets 8 Ball Club (Pockets).
- To determine what action / approach the Department should take in respect of the application by Pockets to merge with the Olde Establishment, Tokoroa, and the Putaruru District Memorial Services Club.

Executive summary

1. Pockets has been a longstanding entity in the Tokoroa community. It provides significant employment and community benefit through cue sports, coaching, and a place where members can gather and enjoy one another's company.
2. Pockets notified the Minister of Internal Affairs by letter dated 4 December 2015, that they wish to merge with two Class 4 Clubs, the Olde Establishment based in Tokoroa, and the Putaruru District Services Memorial Club. The Minister's office was advised that a number of concerns were being worked through with regard to Pockets, and that the Department was aiming to resolve these before seeking Ministerial consent.¹
3. Pockets have been the subject of three audits since 2008. The first two audits, (covering the period 1 April 2007 to 31 March 2008 and 1 April 2009 to 31 March 2010), identified concerns over the governance and management of Pockets; in particular, whether certain committee members had undue influence over Pockets that was not in the best interests of wider members. Concerns also included the acquisition of additional venues, whether Pockets could be defined as a club, and the manner in which net proceeds were accounted for. Neither audit examined in-depth the use of net proceeds. It is unclear if the first of these audit reports was provided to Pockets.
4. The second audit report was issued to Pockets in April 2011. This prompted a substantial response from Jarrod True on behalf of the Club. As a result of the remedial action undertaken by Pockets, and given no evidence was identified with which to take criminal or administrative action against the Club, no further action was taken by the Department.
5. The last audit was carried out for the period 1 April 2013 to 31 March 2014 and uncovered two issues.
6. The first issue involved the use of a credit card provided to Pockets General Manager Wendy Cook. This card was used on numerous occasions during the audit period and the following financial year to obtain over \$50,000 in cash advances. This was predominantly for her personal use, but also included small amounts for player sponsorship and travel. Net proceeds were used to pay the credit card provider debt. Wendy Cook then paid this back using the Pockets staff reimbursement account facility.
7. It was also discovered by the Department in the 2014/2015 year that \$3,800 had not been attributed to Wendy Cook's personal expenditure. Pockets said that this was an error of the part of their administration staff, and provided a statement confirming it was their error as opposed to a deliberate avoidance by Wendy Cook.

6(d)

¹ The Minister does not consider the compliance of clubs when looking at club mergers. However, the Department believes it is prudent to resolve the current concerns before progressing the merger application.

6(d)

9. Jarrod True has not provided a response to the issue of the sale of 38 Bridge Street. On the information available it is not entirely clear whether the improvements made by Pockets were included in the valuation or not – the valuation notes that “tenants’ improvements” were not included, but later notes the new carpet. However, it seems that under the lease agreement, Pockets were obligated to pay for these improvements.
10. Jarrod True responded on behalf of the Club to the use of the credit card by Wendy Cook and provided a letter to the Department outlining Pockets’ position with regard to the use of net proceeds.
- 10.1 Jarrod True agreed that the manner in which the net proceeds had been used was not 'best practise', but disputed that a formal breach of the Gambling Act had occurred. The Department considers it a reasonable argument that the use of gaming funds in this manner was lawful up until 3 March 2015, but not good practice.
- 10.2 Jarrod True stated that the funds used by Wendy Cook were to be repaid, and that when a payment is made, a corresponding debt is created in favour of the Club. The funds remained on the Pockets’ books (they were just moved around) and that the payments were not actual 'applications' of net proceeds.
11. A legislation change on 3 March 2015 saw the insertion of Section 105A of the Gambling Act 2003. This section of the Act requires gaming machine profits to remain in the dedicated account until used for costs or applied as net proceeds. There are several occasions after 3 March 2015 where cash has been withdrawn using the credit card and attributed to Wendy Cook’s staff reimbursement account. These purchases constitute a likely breach of the Act, but did take place before remedial measures were introduced by Pockets.
12. Pockets has undertaken remedial action to address the issues identified. These have included:
- Cancelling the cash out facility on the Pockets credit card.
 - Formal limits placed on the use of the staff reimbursements accounts.
 - No longer funding any staff expenses or advances from Pockets gaming account.
 - Pockets has now set out a policy for the provision of cash payments and meal allowances.
 - 6(d) , and Pockets has proposed changes to the composition of the merged committee, including bringing in an independent director.

<i>Decision required</i>	<i>Response</i>
<p>An answer to the following:</p> <ul style="list-style-type: none"> Does Pockets currently meet the definition of a Club as provided by the Gambling Act 2003? Given the actions or inactions of Pockets in allowing net proceeds to be used, should Pockets have their Class 4 gaming Licence renewed? Given the inappropriate use of net proceeds by Wendy Cook, is she a suitable person under the provisions of the Gambling Act 2003? There is a proposal by Pockets to have a restructured committee, but to retain Wendy Cook in the General Manager's role. Is this an acceptable proposition? 	
<i>Advice required</i>	<i>Response</i>
<ul style="list-style-type: none"> Whether further lines of investigation should be pursued? 	

Background / Timeline

- Pockets are a cue Sports Club spread across several locations in Tokoroa. They were incorporated as a Society in 1999. Current membership is around 2,500, and gaming revenue for the year ending March 2015 was \$3,169,000. This revenue is projected to drop to \$1,700,000 this year given the recent loss of a venue. On its website Pockets states that they 'aim to develop cuesports throughout New Zealand.'
- Pockets Certificate of Incorporation and current constitution are attached.
(Attachment 1 and Attachment 2)
- Pockets currently has an Operator's Licence (GMV 1217) and venue licences in respect of:
 - 38 Bridge Street, Tokoroa (GMV 16) Pockets 8 Ball Club which operates 18 machines.
 - 42 Mannering Street, Tokoroa (GMV 1598) Pockets 8 Ball Club 2 which operates 18 machines.
(Licences at Attachment 3)

Summary of Current Establishments:

- Pockets currently owns the following establishments:
 - 56 Bridge Street, Tokoroa - known as Que Masters and is currently owned by Pockets and houses four administration staff. It is also their main Pool/Billiards rooms with a function centre capability. It was possibly their founding building and is currently a non-gaming premise.
 - 44 Bridge Street, Tokoroa - is currently owned and occupied by Pockets café, Central Wine and Coffee. This building was purchased in September 2008 by Property Investments Tokoroa Ltd (PITL) of which Wendy Cook and Bruce Wilkinson are the sole directors and shareholders for 9(2)(a). It was sold to Pockets in October 2013 for 9(2)(a). The café was opened on or about July 2011.
 - 42 Bridge Street, Tokoroa - currently owned by Pockets. This property has been altered to allow people to walk between 44 and 38 Bridge Street. It has lounge furniture and seating arrangements.

- 38 Bridge Street, Tokoroa - currently a gaming venue operating 18 machines. It was purchased in October 2008 by PITL for 9(2)(a) and sold to Pockets in May 2015 for 9(2)(a).
- 42 Mannering Street, Tokoroa - currently owned by Pockets having been purchased by them from Philip Wilkinson in 2004 for 9(2)(a). It was formerly known as 'Shotz' Bar and currently operates 16 gaming machines.

Summary of Previous Establishments:

17: Pockets previously owned, or had involvement in, the following establishments:

- Pockets Club premises at 21 Massey Road Pukekohe Auckland - was owned by Pockets but sold to Masse Incorporated in March 2014 for \$380,000. The venue had operated 18 gaming machines.
- Pockets Club premises at 200 West Coast Road, Glen Eden, Auckland - was owned by Pockets but sold to Masse Incorporated in May of 2014 for \$190,000. The venue had operated 18 gaming machines.
- Pockets Club premises at 1120 Hinemoa Street, Rotorua. This was purchased by Pockets on or about July 2008 for \$349,400 and sold to Kotuhi Enterprises Ltd in June 2011 for \$4,575.00. In October 2011, Pockets purchased the venue from Kotuhi Enterprises Ltd for \$4,575.00 but closed the venue in January 2014, selling the gaming assets to Southern Trust for \$103,000 and other assets for \$3,000.
- Pockets operated 18 gaming machines under a venue agreement at Mavericks Bar 40 - 48 Downing Street, Glenfield, Auckland. This has been a long standing arrangement but ceased in November 2015 when the venue signed a venue agreement with Bluesky Community Trust.

18. In 2008, Pockets purchased Legends bar in Rotorua for \$350,000 with the intention of converting it to a Club venue. They were unable to secure a liquor licence on the basis that they did not meet the definition of a Club under the then Sale of Liquor Act 1989. The Authority comments on Pockets commercial nature. **(Attachment 4)**

19. In January 2009, the Department brought a successful prosecution against Pockets for operating gaming machines at the Rotorua venue whilst the primary activity (the sale of liquor) was not available. Pockets were convicted and discharged. The Gambling Inspectors report is attached.

20. In 2012 Pockets committee minutes began to reflect financial pressures throughout the year. **(Attachment 12)**

21. In 2013, Committee meeting minutes continued to suggest Pockets were under financial pressure as per the following: **(Attachment 13)**

- Committee meeting 29 August 2013 - discussed a possible merger with the Olde Establishment (a gaming venue in Tokoroa) and the sale of 44 Bridge Street owned by Wendy Cook and Bruce Wilkinson to Pockets.
- Committee meeting 26 September 2013 - Sale of 44 Bridge Street goes ahead and approaches made to Pockets regarding the sale of the Pukekohe and Glen Eden Clubs.

- Committee meeting 24 October 2013 – Rotorua Club to close possibly January 2014 and a prospective buyer has been through Pukekohe and Glen Eden. 9(2)(a) [REDACTED] 9(2)(a) [REDACTED].
 - Committee meeting 28 November 2013 - Players are having to fund themselves to tournaments.
22. Committee minutes for 2014 report the closure or sale of its regional venues. **(Attachment 14)**
23. On 5 August 2015, an application was filed by Jarrod True with the South Waikato District Council seeking Territorial Authority consent for Pockets to merge with the Olde Establishment (Tokoroa) and the Putaruru District Services Memorial Club. An amended letter was filed in December 2015. Consent was granted. A letter dated 4 December 2015 was sent to the Minister of Internal Affairs by the three Societies, seeking authority to merge.

(Attachment 23)

Previous Findings

9(2)(g)(i) [REDACTED]

25. A discussed document dated 19 March 2009 was produced in conjunction with the May 2009 audit. There are no documents available which answer the matters raised in the 2009 audit report or the 2009 discussion paper. Other topics covered include:
- Does Pockets meet the definition of a 'Club' as provided in the Gambling Act 2003?
 - The acquisition of 42 Mannering Street, Tokoroa by Pockets, from Phil Wilkinson.

2011 Audit report

(Attachment 8)

26. The Department undertook an audit of Pockets for the period 1 April 2009 to 31 March 2010 with a report being issued on 22 April 2011.

This audit raised similar concerns to the 2009 audit document:

- How membership was determined – and whether Pockets met the definition of a Club.
- Governance and Operations - two occasions where the Society has entered into questionable financial property transactions.
- The manner in which Pockets applied net proceeds - applying net proceeds as if all its activities, regardless of their nature, were authorised purposes.

2011 Audit report response

(Attachment 9)

27. The Department received a letter and numerous attachments from Jarrod True, dated 21 November 2011 in response to the audit.

28. The audit and Pockets response generated discussion and several reports. **(Attachment 10)**

9(2)(h)

The end result of this is a report dated 16 January 2014 which recommended Pockets get audited again to assess if they have addressed recommendations made.

2011 Pockets

(Attachment 11)

29. Pockets committee minutes of 29 October 2011, show six resolutions were put to those present.

The resolutions sought to answer questions around:

- Common bond.
- Sense of belonging.
- Members' sense of ownership in the Club.
- The addition of clubrooms at Rotorua, Glen Eden, and Pukekohe has added value to the Club and its membership.
- Confidence in the management.
- An increase in the membership fee from \$5 to \$25.

30. At the same meeting, Pockets moved to amend their constitution to address the audit report's comments. This resulted in the following actions being taken:

- Notice of meetings by way of notice boards and website (not on website currently).
- A requirement to include an independent professional person and regional representatives on the committee (done).
- Committee minutes to be posted on their website (not currently being done).
- Annual accounts to be posted on their website (not currently being done).

Recent Findings/ Evidence / Actions Taken

9(2)(g)(i)



9(2)(ba)(i)



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Club credit card use - Policy

34. There is no Pockets policy which specifically covers the use of the Club's credit card.

The Staff Reimbursement account – (sometimes referred to as the Gilmour's account)

35. This is a ledger account managed by the Pockets administration. It enables staff and committee members to obtain groceries, alcohol, and goods and charge it to Pockets. The provider of the goods is then paid from the Pockets gaming account. Staff pay this off through salary or wage deductions. This facility has been available for a number of years. Wendy Cook's ledger was found to have \$16,000.00 debited to it during the audit period which was largely due to the cash withdrawals.
36. Pockets did not have a Policy document that covered the use of the staff reimbursement account or the advancement of cash for player allowances.
37. An examination of Pockets 03 bank account (the gaming account) confirmed that payments for the credit card expenditure were primarily made from this account to the credit card provider.

There were occasions where payments were made from the Clubs 02 account but these were largely payments made as a result of Wendy Cook's salary deductions.

38. Pockets was asked to supply receipts for the cash spent on entry fees and players but were unable to.

Wendy Cook advises the Pockets committee

(Attachment 19)

39. On 12 June 2015, a committee meeting was held by Pockets at which Wendy Cook advised them of her credit card use. The minutes suggest she failed to completely explain what occurred. At the conclusion of the meeting, the committee which was made up largely of family members was unanimous in their support of her.

40. On 31 August 2015, Jarrod True advised the Club to adopt further policy regarding player allowances.

(Attachment 20)

2014/2015 credit card use

41. The 2014/2015 use of the Pockets credit card was examined. A further 43 cash withdrawals were identified totalling \$24,562. Of that, \$17,000 was transferred to Wendy Cook's staff reimbursement account. Pockets could not provide receipts for further cash claimed as tournament entry fees, travel and other expenses.

42. It was also discovered that \$3800 had not been debited to Wendy Cooks staff account. Pockets office staff provided a signed a statement advising that this was due to 'miscoding'. This was repaid by Wendy Cook when the error was found. This error was only discovered as a result of the Department requesting the information and was not as a result of any Pockets initiated review.

(Attachment 22)

Cancellation of the Pockets credit card cash out facility

(Attachment 19)

43. Pockets confirm the ANZ credit card cash out facility was cancelled.

9(2)(g)(i)

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2014 Audit report

(Attachment 24)

46. Owing to ongoing negotiation, a draft audit report has not been provided to Pockets.

Consultation with Pockets via Jarrod True - May 2016

47. On 25 May 2016, Jarrod True met with 9(2)(a) [REDACTED] to discuss Wendy Cook's suitability. He acknowledged the use of net proceeds in repaying the credit card. He proposed a new committee under the merger of the three Societies. Four members from the joining Societies would be added to Phil Wilkinson, Wiki Tamati and Peter Cook who would remain as President. Wendy Cook would also remain on the committee. 6(d) [REDACTED]

Letter from Jarrod True to the Department dated 31 May 2016

(Attachment 25)

48. Jarrod True wrote to the Department by letter dated 31 May 2016. He identified the concerns regarding Wendy Cook's use of a Pockets' credit card and the staff reimbursement system. He pointed out the measures taken by Pockets to address the issues and 6(d) [REDACTED] and removing her as Venue Manager. Wendy Cook would retain her role as the General Manager of the merged Clubs. He submits that Pockets objectives are similar to that of a Workingmen's Club, offering many different activities not just cue sports.

Phone conference call 9 June 2016

49. A phone conference was held on 9 June 2016 between Jarrod True, 9(2)(a) [REDACTED] and 9(2)(a) [REDACTED]. At this meeting it was agreed:
- The Club provides a number of benefits and is an important part of Tokoroa.
 - There could be negative implications if the merger proposal did not proceed.
 - 6(d) [REDACTED].
 - Some remedial action had been taken and better financial practises were in place.
 - 6(d) [REDACTED]
 - Looking to diversify the committee was a good step.

Letter from Jarrod True to the Department dated 13 June 2016.

(Attachment 26)

50. Jarrod True stated that the funds used by Mrs Cook were to be repaid and that when a payment is made, a corresponding debt is created in favour of the club. Therefore the funds remained on the Club's books and that the payments were not actual 'applications' of net proceeds. The effect is that this was just moving the funds around on the books. 9(2)(h) [REDACTED]

51. However, the legislation in respect of this changed on 3 March 2015 with the insertion of Section 105A of the Gambling Act 2003. 6(d) [REDACTED]

Department legal opinion - Tamsyn Badland

(Attachment 27)

52. The full legal opinion is attached.

**Meeting between 9(2)(a) [REDACTED], Jarrod True and Wendy Cook
(Attachment 28)**

53. Jarrod True extended an offer to 9(2)(a) (Manager Gambling Compliance) and 9(2)(a) 9(2)(a) (manager Licensing Compliance) to meet with him and Wendy Cook on 13 July 2016. At that meeting, Wendy Cook provided 9(2)(a) with a prepared written statement which outlined her position. The statement covers amongst other things her history with Pockets and acknowledges her inappropriate use of the credit card and the staff reimbursement facility. It outlines the measures put in place to prevent a repeat of these issues.

Situation and Analysis

Does Pockets meet the definition of a Club?

54. This matter has been raised several times by the Department in recent years, particularly as Pockets expanded its business by acquiring commercial venues. The definition of a 'Club' as provided by the Act is as follows:

'A voluntary association of persons combined for a purpose other than personal gain'

55. Pockets footprint has changed considerably in that it now operates venues only in Tokoroa. It no longer operates regional venues which the Department had previously questioned as to whether they were commercial operations. Given its current situation and the fact that Pockets seemingly provide a wider array of amenities, we believe it meets the definition.
56. It is recommended that no further consideration is given to this matter except that required by Licensing Compliance as part of standard processing for merger applications.

Governance / Management and Wendy Cook's Suitability

57. Given the history of poor governance and management over an extended period of time, the Department has to be satisfied that the existing governance and management structures for Pockets provide the level of assurance required to meet ongoing compliance requirements and support good practices.
58. Pockets propose to merge with two other South Waikato Clubs. This sees the Olde Establishment in Tokoroa close and the machines moved to an existing Pockets venue. In respect to the Putaruru District Services Memorial Club, its compliment of 9 gaming machines will move to the same Pockets venue. The premises in Putaruru will remain as a Clubrooms/community facility leased and financially supported by Pockets. Under this proposal, it is possible the driving force is the acquisition of further gaming machines into Pockets Tokoroa.
59. Historic audits have proved inconclusive. Whilst issues have been raised with regard to poor governance and management, there has been no enforcement action from the Department. These reports do show a pattern of ongoing behaviour.
60. 9(2)(g)(i) 9(2)(h)

9(2)(h)

61. The Club has undertaken a range of remedial actions to improve its practices, and a recent auditor's report from Ingham Mora (dated 28 June 2016), confirmed that they are aware of the continued use of the staff advance system and have commented that "no actual or suspected frauds or illegal acts" came to their attention during the audit.

62. 9(2)(h)

This offence applies in respect to the holder of a Class 4 operator's licence. This may be grounds upon which administrative action may be taken against Pockets. A breach of this section of the Act would provide grounds for making Pockets unsuitable pursuant to Section 52 (4) (c) (i) of the Gambling Act 2003.

63. Wendy Cook has acknowledged her misuse of both the credit card and the staff reimbursement facility. It is irrelevant what the expenditure was on, however, this is a concern given her role as General Manager requires her to be accountable for financial practices at Pockets. She has also been a member of the Pockets' committee and management during a period where the Department has raised multiple concerns over the governance of the Club.

64. 9(2)(ba)(i)

65. 6(d)

, and the manner in which Mrs Cook spent some of her cash advances is not a relevant consideration for assessing suitability.

66. 6(d)

67. As General Manager, and given her close association with many of the committee members, there is the potential Wendy Cook will have an undue level of influence over the committee and its decision-making. Pockets has indicated that Wendy Cook is irreplaceable given her experience and enthusiasm for cue sports. In her own statement, Wendy Cook advises she is the 'voice and face of Pockets'. This indicates a level of risk of undue influence should she remain as General Manager.

68. 6(d)

² 9(2)(ba)(i)

Options

The options listed have considered:

- The situations described
- The negotiations to date
- Remedial action taken to date
- The likelihood of offences being identified post 3 March 2015 (expected delivery of this information is Friday 29 July 2016)
- The likelihood of a successful appeal against a cancellation/non-renewal before the Gambling Commission.

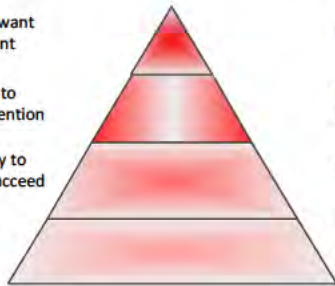
Behaviour/Attitude

We believe that you do not want to comply or wilfully negligent

We believe you do not want to comply but will if we pay attention

We believe you genuinely try to comply but do not always succeed

We believe you are willing to comply



Compliance

We use the full force of the law

We deter non-compliance through detection

We assist you to comply

We make compliance as simple & straightforward as possible

How we might respond

Prosecution, licence suspension or cancellation, fine

Auditing, intel, inspections, monitoring, formal warnings, infringement notices

Guidance, information, templates, codes of practice, simplified compliance & notices

Providing guidance, online services, longer licensing, compliance cooperation agreements & collaborative initiatives

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Options	Level of response	Pro	Con
<p>Accept the current proposal provided by Jarrod True which is:</p> <p>A committee made up of the three merged Clubs being:</p> <p>Peter Cook (President)</p> <p>Lisa Gray (Vice President)</p> <p>Wiki Tamati Secretary/Treasurer</p> <p>Phil Wilkinson Committee</p> <p>Lindsay Glover Committee (ex Putaruru)</p> <p>Adele Motion Committee (ex Putaruru)</p> <p>Peter Everitt Committee (ex Olde Establishment)</p> <p>Bill Luyten Committee (ex Olde Establishment)</p> <p>Phyllis Huitema Committee (Independent)</p> <p>6(d) [redacted] but to remain as General Manager.</p>	<p>- Issue the audit report detailing the issues found and accept the proposal.</p> <p>- Monitor Pockets going forward to ensure that they achieve compliance and are an effective operation.</p>	<p>- Provides an immediate resolution for Pockets and the Department.</p> <p>- The Club can continue to operate in Tokoroa providing employment and community facilities.</p> <p>Acknowledges the willingness of Pockets to comply, and the level of remedial action taken to ensure better governance and management practices are in place.</p>	<p>- Does not address potential breaches of the Gambling Act in respect of occurrences after 3 March 2015.</p> <p>Does allow some current committee members to remain (e.g. President Peter Cook), when there was a lack of action by the committee to identify these issues and address them sooner.</p> <p>Wendy Cook may still hold significant influence over the committee given her retaining of the General Manager role.</p>

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<p>2. Same as option 1 above, 6(d)</p> <p>Section 52(4)(c) and (d)</p>	<p>-Issue the audit report detailing the issues found and accept the proposal.</p> <p>- Monitor new Pockets committee going forward to ensure that they achieve compliance and are an effective operation.</p>	<p>Provides an immediate resolution for Pockets and the Department.</p> <p>- The Club can continue to operate in Tokoroa providing employment and community facilities.</p> <p>6(d)</p>	<p>- Does not address potential breaches of the Gambling Act in respect of occurrences after 3 March 2015.</p> <p>Does allow some current committee members to remain (e.g. President Peter Cook), when there was a lack of action by the committee to identify these issues and address them sooner.</p> <p>6(d)</p> <p>is likely to be challenged with the Gambling Commission.</p>
<p>3. Issue audit findings, reject proposal and propose a complete change of the Pockets committee and 6(d)</p>	<p>Negotiated outcome</p> <p>6(d)</p>	<p>- Opportunity for new governance and management structure at the Club – greater assurance of</p> <p>Shows the Department takes the matter seriously and that level of response is escalated with time.</p>	<p>- Legal grounds may not support this approach.</p> <p>-Given the significant impact on the Cook and Wilkinson families, this option is highly unlikely to be accepted.</p> <p>- This could also have a detrimental effect on Pockets/community given the significant input provided by these two families.</p>

<p>4. Propose a period of suspension based on the misuse of gaming funds post 3 March 2015 as per Section 105A.</p>	<p>Issue proposal to suspend with additional negotiated outcomes</p>	<p>- The Club can continue to operate in Tokoroa providing employment and community facilities -Seen by the Sector to take action when appropriate Could be used with other options outlined in 1 to 3 above</p>	<p>Further delays -Possible Gambling Commission adverse decision - Seen as a weak response. The Committee would simply continue on once the suspension was served.</p>
<p>5. Issue audit and a proposal to not renew the operator's licence, on the grounds of unsuitability of Pockets pursuant to Sections 52 (4) (c) (i) of the Gambling Act 2003.</p>	<p>These sections allow the Secretary to consider any 'other matters he considers relevant'</p>	<p>- Under a successful proposal, Pockets would lose its Class 4 licence. Shows the Department takes the matter seriously and that level of response is escalated with time.</p>	<p>- The process can be time consuming and may not guarantee a successful outcome - Level of evidence could be challenged - Previous Gambling Commission decisions have seen a reluctance to sanction were remedial action has been undertaken. In this instance, Pockets have addressed concerns identified and to a certain extent minimised risk going forward. Eg: the removal of cash out facilities on the credit card, new policy to address cash payments.</p>

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Risks

1. Further instances of misusing net proceeds, or decision-making that supports personal gain over the interests of club members.

2. Adverse media comment if a lack of action from the Department is brought to the attention of media.
3. Adverse media attention if Pockets closes due to sanction action.
4. A lack of action could be seen to endorse what is unacceptable behaviour.
5. Pockets may have to close if it cannot continue to operate as a result of Departments sanctions - this creates job losses and community disharmony.
6. Department is criticised or challenged for causing further delays with the merger proposal.

Decisions required

<i>Decision required</i>	<i>Response</i>
1. Which of the options available is appropriate in all of the circumstances?	Option 1, 2, 3, 4, or 5

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Outcomes & Advisory Board Paper

Title: Sec 95 Club Merger - Pockets, Olde Establishment & Putaruru RSA

Business Unit: Licensing

Date: 20 October 2016

Key issues	
Application of Section 95 – Club Mergers	
What are you asking TOAB to provide?	Timeframe
Advice	N/A

Author

Name	Position	Direct phone line	Suggested 1 st contact
9(2)(a)	Team Leader	09 362 7921	✓

Return to	Lance	
Cohesion Library	.../Gambling/Policy & legislation Advice	Document Set Link

Sign-off (Team Leader level)

Name	Position	Direct phone line	Suggested 1 st contact
	Team Leader		✓

Purpose

1. To discuss Pockets merger in respect of section 95 requirements. (Refer Annex for Section 95 extract)

Background & Summary

The OAB panel will already have a reasonable appreciation of the current application, for ministerial consent to merge Pockets, Olde Establishment & Putaruru RSA, as a result of recent negotiations to resolve a number of compliance issues relating to the Pockets class 4 operations and the renewal of their licence. The following is a condensed history of the Pockets merger to this point:

- June/August 2015 – Application to TA for merger of Pockets 8 Ball and Olde Establishment
- November 2015 – Amendment to TA application to include Putaruru RSA as part of the merger
- December 2015 – Application for Ministerial consent received – Ministerial briefing drafted but put on hold pending outcome of compliance issues and ability to renew Pockets operator licence
- August 2016 – Compliance issues resolved clearing way for Ministerial consent application to be progressed
- September 2016 – Briefing to minister reviewed – now current to this paper

The Pockets merger presents a unique situation whereby one of the merging clubs, specifically Pockets, holds more than one class 4 venue licence. With this in mind and on review of the initial draft ministerial briefing clarification was sought from legal on several aspects of section 95 requirements.

The following are pertinent extracts from the request for legal advice and give context to the OAB discussion (Further context also provided on page 7 under heading of Similar Situations).

9(2)(h)

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9(2)(h)

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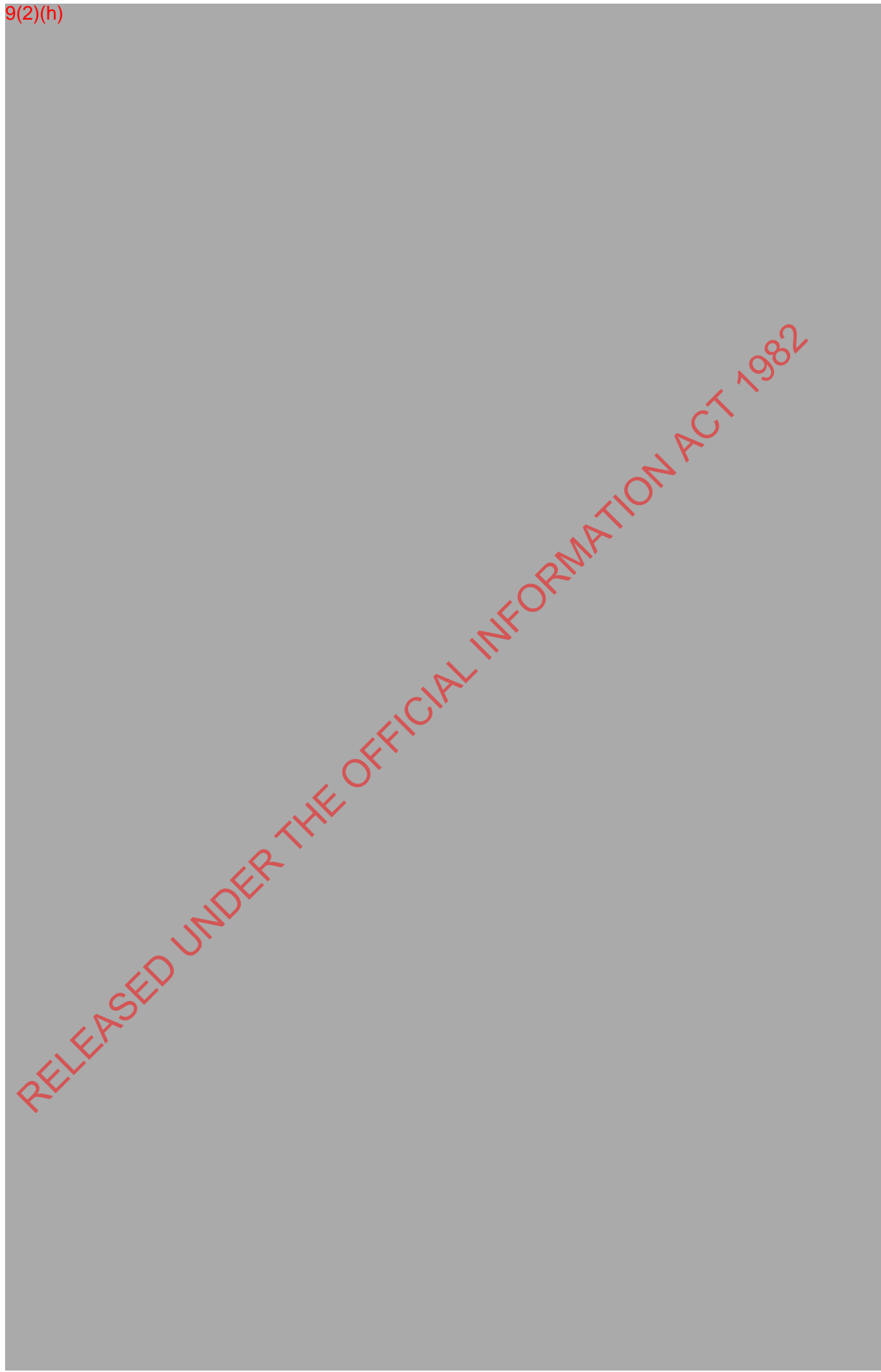
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9(2)(h)

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9(2)(h)



Decision required	Response
1. What considerations and actions are required to reach an outcome on the current ministerial consent application?	

Problem definition

To be discussed and if required defined.

Similar Situations

The following is a



As the Hastings RSA has relevance to the Pockets merger the following is a brief history:

- 2013/2014 Hastings RSA applied for and was approved to merge with the Catholic Club Inc. (No issues with this merger – straight forward & standard club merger which took effect in early 2014)
- August 2015 - Hastings RSA apply for Ministerial consent to merge with the Heretaunga Club
- August 2015 - Hastings RSA submit application for a new commercial class 4 venue, namely the Elbow Room GMV735 – NOTE The declaration on the GC3 application is dated July 2015
- October 2015 – Briefing to Minister signed off and subsequently approved
- November 2015 – Licence granted to Hastings RSA for the Elbow Room (14 EGM's)
- 30 March 2016 – Licence surrendered for Elbow Room
- 31 March 2016 – Licence issued for merged club under name of Hastings RSA & new licence issued for the Elbow room

Points of note from review of Hastings RSA merger documents:

- The August 2015 application for Ministerial consent provides no information in respect of the Hastings RSA's intent to operate a commercial class 4 venue
- The briefing to the Minister does not make any reference to the Hastings RSA intent to operate a commercial class 4 venue (at this time we were in receipt of the Elbow Room application) or take into account any implications that this may have in satisfying section 95 of the Act, more specifically:
 - The briefing does not address section 95(1)(c) – Intent to operate as a single club at a single class 4 venue
 - The briefing does not address section 95(4) – maximum number of machines that may be operated
- It would appear the TA, in making its recommendation, was not informed of the clubs intent to operate a further 14 gaming machines at a commercial venue and the TA consent issued was specific to one merged entity operating one venue and a total of 30 gaming machine.

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Appendix A: Gambling Act Extract

95 Ministerial discretion to permit more gaming machines if clubs merge

(1) This section applies to 2 or more corporate societies that the Minister is satisfied are clubs and--

- (a) 2 or more of which hold class 4 venue licences; and
- (b) can each demonstrate a significant history of--
 - (i) operating as clubs for club purposes; and
 - (ii) operating the number of machines specified in any class 4 venue licences held immediately before making an application to the Minister under subsection (2); and
- (c) can each demonstrate that they intend to merge into a single club operating at a single class 4 venue []; and
- (d) can demonstrate to the Minister's satisfaction that the proposed class 4 venue is not a commercial premises; and
- (e) can demonstrate to the Minister's satisfaction that the merged club will have a substantial active membership; and
- (f) have obtained a territorial authority consent for the venue, either without a condition on numbers of gaming machines or with a condition on numbers that is consistent with the number of gaming machines that it is proposed to operate at the venue.

(2) The corporate societies may apply jointly to the Minister for approval to operate up to the number of gaming machines consented to by the territorial authority at the proposed venue.

(3) [The Minister may approve an application under subsection (2) as the Minister sees fit.]

(4) The Minister's approval must specify the number of gaming machines that may be operated, but the number--

- (a) must not exceed the number of gaming machines specified in a territorial authority consent; and
- (b) must not in any case exceed the lesser of--
 - (i) 30; or
 - (ii) the sum of the number of gaming machines specified in all of the corporate societies' class 4 venue licences at the time of the application.

(5) The corporate societies may then apply jointly to the Secretary for a class 4 venue licence for the proposed venue in accordance with section 65, but the Secretary must not issue a class 4 venue licence until the corporate societies have--

- (a) merged; and
- (b) obtained a class 4 operator's licence.

(6) On issue of the class 4 venue licence,--

- (a) the Secretary must cancel [any previous] class 4 venue licences held by the corporate societies, and there is no right of appeal against that cancellation; and
- (b) [a corporate society may not, within 6 months after the cancellation, submit an application for a class 4 venue licence in relation to any of the class 4 venues referred to in paragraph (a).]

(7) The limits in subsection (4) may be reduced by regulations made under section 314(1)(a).

Internal Affairs briefing

Hon Peter Dunne
Minister of Internal Affairs

Application to operate 30 gaming machines following the merger of the Pockets 8 Ball Incorporated, the Olde Establishment

Title: Incorporated, and the Putaruru District Services Memorial Club.

Date: 8 December 2016

Key issues

The Pockets 8 Ball Incorporated, the Olde Establishment Incorporated, and the Putaruru District Services Memorial Club are merging. They seek your approval to operate 30 gaming machines at a new merged club premises. The territorial authority consent permits a maximum of 30 gaming machines at the merged premises. Section 95 of the Gambling Act 2003 provides the Minister with discretion to permit more gaming machines than usual if clubs merge.

The Department recommends a pragmatic and purposive interpretation of the requirements, which is consistent with the community benefit purpose of the Act and the Department's sustainable community funding objective. The Department is satisfied that the merger application from the three clubs indicates a genuine desire to merge into one club for reasons of sustainability and community benefit.

Action sought

Note that the Pockets 8 Ball Incorporated, the Olde Establishment Incorporated, and the Putaruru District Services Memorial Club wish to merge and have applied for your approval to operate 30 gaming machines at a merged club premises;
Approve the application to operate 30 gaming machines at the merged club venue, as per the valid territorial authority consent; and
Sign the attached letter.

Timeframe

At your convenience.

Contact for telephone discussions (if required)

Name	Position	Direct phone line	After hours phone	Suggested 1 st contact
9(2)(a)	Manager, Licensing Compliance	9(2)(a)	9(2)(a)	✓
	Manager, Operational Policy			

Return to	9(2)(a)	Level 14, 147 Lambton Quay
Cohesion references	Club Mergers Class 4	
Ministerial database reference	IA 201600653	

Purpose of briefing

1. This briefing recommends that you approve the application received from the Pockets 8 Ball Incorporated (Pockets), the Olde Establishment Incorporated, and the Putaruru District Services Memorial Club to operate 30 gaming machines at a merged club venue. Your approval is being sought because section 95 of the Gambling Act 2003 (the Act) requires the Minister to give permission for merged clubs to operate more gaming machines at one venue than they are otherwise allowed under the Act.

Application to permit more gaming machines if clubs merge

2. The Act allows the Minister to approve club mergers in certain circumstances to provide some flexibility for clubs that may no longer be viable.
3. The respective Presidents of Pockets 8 Ball Incorporated, the Olde Establishment Incorporated and the Putaruru District Services Memorial Club wish to merge and operate 30 gaming machines on Pockets' premises at 56 Bridge Street, Tokoroa. The merged club will be known as Pockets 8 Ball Incorporated.
4. The clubs may apply jointly to the Minister for approval to operate up to the number of gaming machines consented to by the relevant Territorial Authority (TA). The number may not exceed the number specified in the TA consent, and in any case, may not exceed the lesser of: 30 gaming machines, or the total number of gaming machines specified in the clubs' venue licences at the time of the application. This application fulfils this requirement.
5. The venues that will cease to operate as class 4 gambling venues as a result of the merger are:
 - The Olde Establishment, 220 - 224 Mannering Street, Tokoroa (9 machines);
 - Putaruru Club, 35 Buckland Street, Putaruru (9 machines); and
 - Pockets, Pool Lounge, 42 Mannering Street, Tokoroa (16 machines).
6. The merger application was received in December 2015. We have not briefed you on the application before now because we were working with Pockets to address significant shortcomings in its governance and management. We did not renew Pockets' class 4 operator's licence until we were satisfied that these issues had been rectified.
7. Pockets has improved governance through the appointment of new board members and put in place an action plan to address the shortcomings. The Department now has confidence in Pockets. We will continue to monitor and work closely with Pockets to ensure these improved compliance standards are maintained.

Criteria that must be satisfied

8. Section 95 of the Act sets out the qualifying criteria that must be satisfied for a joint application to operate up to 30 gaming machines.
9. The Department considers that the application clearly complies with most of the requirements of section 95(1) of the Act. Specifically:
 - 9.1 Section 95(1) of the Act states that the Minister must be satisfied that the applicants are clubs. All three clubs have a long history of operating as clubs for

- club purposes, including offering various social and sporting activities to club members.
- 9.2 Section 95(1)(a) requires each club to hold a venue licence. All three clubs hold a current class 4 operator's licence and a class 4 venue licence.
- 9.3 Section 95(1)(b)(i) requires each club to demonstrate a significant history of operating as a club for club purposes. These clubs have a long history of operating as clubs for club purposes, including offering various social and sporting activities to club members.
- 9.4 The incorporation dates for the clubs are:
- The Olde Establishment – July 1996;
 - Pockets – May 1999;
 - Putaruru District Services Memorial Club – October 1948.
- 9.5 Section 95(1)(b)(ii) requires each club to demonstrate a significant history of operating the number of gaming machines specified in its current venue licence. Pockets has 16 gaming machines specified in its venue licence. It has operated machines for more than 15 years. The Olde Establishment has 9 gaming machines specified in its venue licence. It has operated machines for over 15 years. The Putaruru District Services Memorial Club has 9 gaming machines specified in its venue licence. It has operated machines for over a decade.
- 9.6 Section 95(1)(d) requires the Minister to be satisfied that the proposed class 4 venue is not a commercial premises. Access to the venue will remain limited to club members and guests who are accompanied by a member, which meets the requirement that the premises are a non-commercial venue.
- 9.7 Section 95(1)(e) requires the Minister to be satisfied that the merged club will have a substantial active membership. Current membership of Pockets is 1602. The Olde Establishment has a current membership of 297, and the Putaruru District Services Memorial Club has a membership of 300. Documentation accompanying the application states that for the purposes of amalgamation all current members automatically become members of the newly merged club.
- 9.8 Section 95(1)(f) requires the clubs to obtain TA consent for the venue and for the number of gaming machines proposed to operate at the venue. The South Waikato District Council has granted a valid consent for the Pockets club venue at 56 Bridge Street, Tokoroa to operate up to a maximum of 30 gaming machines.
10. Meeting the criteria set out in section 95(1)(c), which requires each club to demonstrate that they intend to merge into a single club operating at a **single class 4 venue** is potentially problematic. Pockets currently has clubrooms at more than one location; two of which are class 4 venues operating gaming machines. Pockets intends to continue to operate gaming machines from more than one venue after the merger.


Comment

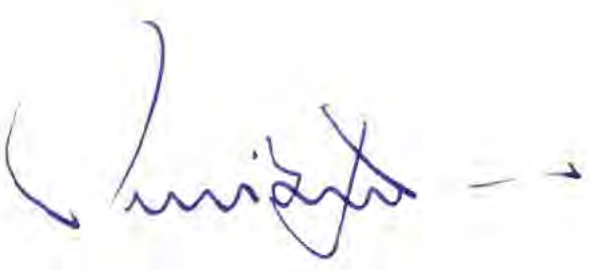
11. Pockets is one of a small number of clubs that operates gaming machines from more than one class 4 venue. Some clubs, like Pockets, have more than one clubroom and operate gaming machines at one or more of their clubrooms. Other clubs have entered into agreements with a venue operator at commercial premises (eg a pub) and operate gaming machines from there as well as their own clubrooms.
12. A plain language interpretation of section 95(1)(c) requiring clubs proposing to merge to demonstrate they have the intention to operate at a single class 4 venue disadvantages clubs that currently operate more than one class 4 venue. It defeats the overall purpose of the Ministerial discretion to allow up to 30 gaming machines when clubs merge, which is to facilitate sustainability of a declining club sector. The Department is considering whether an amendment is needed to remove the reference to operating at a single class 4 venue.
13. In the absence of an explicitly stated timeframe for the clubs' intention to merge, a pragmatic approach can be achieved by reading down the wording of section 95(1)(c) to require only an intention of short duration to operate a single merged venue. This can be argued as legally acceptable in the meantime while legislative reform is being considered. There is a minimal legal risk in this approach.
14. The Department is satisfied that the merger application from the three clubs indicates a genuine desire to merge into one club for reasons of sustainability. The application is consistent with the community benefit purpose of the Act and the Department's sustainable community funding objective. Pockets can demonstrate an intention of short duration to operate at a single merged venue by relinquishing the second class 4 venue licence for a short period of time and then resuming it.
15. A similar situation arose last year culminating in a merged club with one 30 gaming machine venue and another venue operating 18 gaming machines. A similar approach was taken that favours the purposive approach over the plain language.
16. The creation of the new 30 gaming machine venue at Pockets 56 Bridge Street clubrooms will result in cancellation of venue licences of the three venues listed in paragraph 4. The number of venues in the South Waikato district will reduce by two venues with an overall reduction in gaming machine numbers by four.
17. The Department recommends approval of this merger application. Despite this, section 95(3) of the Act allows you to refuse the application or to adjust the numbers of machines to a lower amount than applied for. In this case the Department does not recommend refusal or approval of fewer machines.
18. Officials are available to discuss this application if you wish.

Recommendations

19. The recommendations are that you:

- a) **Indicate** whether you wish to discuss this application with officials; **Yes/No**
- b) **Note** that Pockets 8 Ball Incorporated, the Olde Establishment Incorporated, and the Putaruru District Services Memorial Club have applied under section 95 of the Gambling Act 2003 for your approval to operate 30 gaming machines at a merged club venue;
- c) **Note** that the Department is satisfied that the applicants have complied with the purpose of section 95(1);
- d) **Note** that the maximum number of gaming machines that may operate at the merged club venue is 30 machines;
- e) **Approve** the application to operate 30 gaming machines at the merged club venue; **Yes/No**
- f) **Sign** the attached letter; and **Yes/No**
- g) **Note** that even if you approve the application, the merged club will still need to satisfy the criteria of the Gambling Act 2003 before the Secretary for Internal Affairs can issue it with a new class 4 operator's licence and class 4 venue licence.


Raj Krishnan
General Manager
Regulatory Services


Hon Peter Dunne
Minister of Internal Affairs



Office of Hon Peter Dunne

MP for Ohariu

Minister of Internal Affairs

Associate Minister of Health

Associate Minister of Conservation

4 2 DEC 2016

Mr Peter Cook
President - Pockets 8 Ball Incorporated

Mr Lindsay Glover
Putaruru District Services Memorial Club

Mr Bill Luyten
The Olde Establishment

c/o Mr True Legal
PO Box 28043 Rototuna
Hamilton 3256

Dear Messrs Cook, Glover and Luyten

Thank you for your application of 4 December 2015. I note the delay in responding but understand that this application required extra attention and that the Department of Internal Affairs worked closely with you to resolve the outstanding issues.

Your application seeks Ministerial consent to transfer the machine rights associated with the following venues and undertake a merger. These venues include:

- The Olde Establishment, 220 - 224 Mannering Street, Tokoroa (9 machines);
- Putaruru Club, 35 Buckland Street, Putaruru (9 machines); and
- Pockets 8 Ball Club, Pool Lounge, 42 Mannering Street, Tokoroa (16 machines).

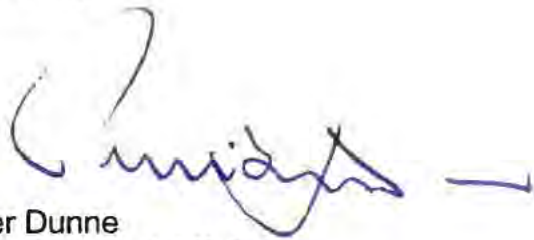
I am pleased to advise that I have approved the application for these clubs, once merged, to operate 30 gaming machines at the new Pockets 8 Ball Incorporated premises at 56 Bridge Street, Tokoroa.

The merged clubs will still need to apply to the Secretary for Internal Affairs for a new class 4 operator's licence and a class 4 venue licence. Licences will only be issued if the Secretary is satisfied that the application meets the criteria in the Gambling Act. When you apply to the Secretary for your new class 4 operator's licence please ensure that a copy of this letter accompanies your application.

My officials at the Department would be happy to continue working with you throughout the remainder of this process, which I understand may need to proceed with some urgency. Please feel free to contact Lance Daly, Team Leader Licensing Compliance, Auckland on Lance.Daly@dia.govt.nz or 09 362 7921 with any questions you may have.

Thank you again for writing.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Peter Dunne', with a horizontal line extending to the right.

Hon Peter Dunne
Minister of Internal Affairs

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Document 10

From: 9(2)(a)
To: [Redacted]
Cc: Charlotte Stanley; 9(2)(a)
Subject: Pockets 8 Ball FV report
Date: Friday, 29 September 2017 2:43:23 PM
Attachments: [Pockets 8 Ball FV 2018.docx](#)
[image002.png](#)

Good afternoon 9(2)(a)

I have considered the application by the merged entity of Pockets 8 Ball. Doing so has caused me some soul searching but I have concluded that they are NOT financially viable.

I have done so on the sole basis of what I consider to be the clear application of section 52A of the Gambling Act 2003. I accept that I am a "lone voice crying in the wilderness" on this issue but every time I raise the question of whether it applies, meet with the same response around the meaning of "primary activity". I do not query that test at all and accept that gaming is not the primary activity of Pockets. However, I strongly contend that gaming is not "...only incidental.." to Pockets operations but rather, is essential and Pockets could not exist in its present form without the income it gains from gaming.

I recognise that you may disagree with my findings about the application of sec. 52A and have therefore recommended that, if you should come to that conclusion, you apply two conditions I set out in para [68] of my report.

Happy to discuss,

Regards,

9(2)(a)
CA| Investigating Accountant | Licensing Compliance | Regulatory Services
Department of Internal Affairs Te Tari Taiwhenua
Direct Dial: 9(2)(a) | Mobile: 9(2)(a)

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REPORT FORM

TO: 9(2)(a) Manager, Licensing Compliance

CC: 9(2)(a), Manager, Gaming Compliance.
Charlotte Stanley, Leader, Gambling Compliance.
9(2)(a), Acting Team Leader, Licensing Compliance
9(2)(a), Senior Gambling Inspector, Licensing Compliance

DATE: 29 September 2017.

SUBJECT: *Pockets 8 Ball Incorporated*– Report on Financial viability financial year ending at a date to be determined once the class 4 licence is issued.

Executive Summary

[1] I have received and considered an application for the issue of a new class 4 gaming licence (GC1A form) submitted by *Pockets 8 Ball Incorporated* ('Pockets') for the financial year ending 31 March 2018. This date will now require re-assessment.

[2] The date of receipt of the application has not been stamped on to the face of the first page but I understand it was reasonably recently. The forecast purportedly covers the first 12 months operations being the period 1st April 2017 to 31st March 2018. However, it remains a valid forecast for the first 12 months of operation subsequent to the date its class 4 licence is eventually issued.

[3] Pockets have requested consent to a merger between (a) *Ye Olde Establishment Inc.* (YOE) of Tokoroa, (b) the *Putaruru District Services Memorial RSA* (RSA) and (c) itself, whereby those two lesser entities will close and a 30 gaming machine facility commence operations from Pockets premises at 56 Bridge Street, Tokoroa. Such an approval requires the consent of the Minister under section 95 of the *Gambling Act 2003*.

[4] Both YOE and RSA are currently licenced to operate 9 machines respectively while Pockets operate 16 machines from its premises at 56 Bridge Street, Tokoroa – that is 34 machines in all. The two closing gaming entities will file the appropriate *Cessation Packs* once the merger is completed.

[5] In seeking consent to the merger, Pockets proposed to limit its operations at 56 Bridge Street to 30 machines thereby relinquishing 4 machines overall.

[6] However, Pockets will also continue to operate an 18 gaming machine facility at 38 Bridge Street, Tokoroa – that is, 48 gaming machines in all.

The merger

[7] In considering financial viability, I met with the Accountants acting for Pockets and discussed the compilation of the 2017/18 “...*proposed gambling operations...*” of Pockets consisting of the combined forecasts of each of the three contributing parties Ye Olde Establishment, the Putaruru RSA and Pockets 8 Ball.

[8] During those discussions several issues arose including the transfer of assets and assignment of liabilities from the two lesser Clubs to Pockets and this involved a review of the Ministerial consent to the merger under section 95 of the *Gambling Act 2003*.

[9] My reading of that section indicated an inability for the merger to proceed on the basis that subsection (1) (c) of section 95 required that the merged entity would consist of a “...*single class 4 venue...*”

[19] However, Pockets would – after the merger - continue to operate gaming machines from at least one other venue and would therefore not comply with that statutory limitation. This scenario was recognised in the Department’s 8th December 2016 briefing to the Minister as being “...*potentially problematic...*”.

[20] The briefing then suggested a “...*reading down of the wording...*” of section 95 (1) (c) and proposed a solution whereby Pockets could relinquish its second, class 4 venue licence so as to fit the technical requirements of the Act and then resume that same venue licence after a “...*short duration...*”. Such a solution however, would then mean that after relinquishing its second venue for a short duration, and then “...*resuming...*” it shortly thereafter would mean that Pockets – in its merged form - would then be operating 48 gaming machines, via two venues in the same street, of the same town and in breach of the additional limitation as to the number of gaming machines set out in section 95 (4) (b).

[21] Frankly, I find it surprising that not only do we propose a reading down of the plain language of the Act but we also propose a solution which, in my view, is tantamount to a manipulation to circumvent the plain language of the statute and is done so on the basis that “*The Department is considering whether an amendment is needed to remove the reference to operating at a single venue...*”

[22] The plain fact is that such an amendment has not been promulgated and to act as though it had, could unravel in other circumstances.

[23] The briefing to the Minister then seeks to add further justification to such a solution to this ‘potentially problematic’ aspect, on the basis that a “...*similar approach was taken that favours the purposive approach over the plain language...*”

[24] Such a solution then begs three further questions:

[a] If the *purposive approach* is appropriate, why consider an amendment to remove the reference to a merged entity operating from one venue only, and

[b] Can such a *purposive approach* be used in other problematic aspects of the Act such as the need to both ensure financial viability in a context where all net proceeds must be distributed, and

[c] Does a similar reading down of the plain wording of the Act in the past justify doing so in the future. If so, errors will compound errors to the extent that it may well be

impossible in future to reign in such an approach when pressures arise in other aspects of applying the clear provisions of the Gambling Act 2003.

[25] However, I note, that the Minister has consented to the merger and therefore my concerns expressed above have no bearing, and are redundant to the process that has already concluded. In any event, the fact that the merger has been approved has no ultimate bearing on the question of the financial viability of the merged Pockets entity.

Summary of Findings as to financial viability

[26] The application was accompanied by Financial Statements in the form of forecasts prepared by Graham Brown and Co Ltd, Chartered Accountants of Putaruru.

[27] I attempted to gauge the realism of the forecast by ‘marrying’ the most recent financial performance of Pockets to that of both YOE and RSA, but this proved futile given the substantial ongoing decline of the gaming operations of both YOE and RSA. I therefore met with the Accountants who prepared the forecasts and am satisfied they are reasonably drafted.

[28] The forecast anticipates gross proceeds of \$2,677,000 with total operator costs of \$1,100,902 resulting in net proceeds of \$1,576,098 or 58.8% of those gross proceeds.

[29] The forecasted year-end Balance Sheet anticipates the following closing result -

Current Liabilities	\$ 650,299.00	Current Assets	\$ 699,954.00
Term Liabilities	\$ 1,288,897.00	Term Assets	\$ 1,827,520.00
Net Assets	\$ 588,278.00		
	\$ 2,527,474.00		\$ 2,527,474.00

[30] The forecasted “Net Asset” position will consist of introduced equity of \$462,680 and unapplied/undistributed net proceeds of \$125,598, which at 4.7% of the forecast gross proceeds, is within the current concessionary allowance.

[31] If that concessionary approach were not available, Pockets forecasted working capital position would be in deficit to the extent of approximately \$76,000.

[32] Despite the apparent satisfactory level of forecasted net proceeds and working capital, I do not accept that the conduct of gambling by Pockets “...*is only incidental.*” to its primary activity.¹ Accordingly – in my view - it may not apply some or all of its net proceeds to its own authorised purposes and would therefore not be able to continue in its present form.

[33] For this reason – and these are more fully set out in para’s 38-65 below - I **cannot conclude** that its “...*proposed gambling operations.*” for the first full year in its merged form, are financially viable.

Consideration of financial viability

¹ Section 52A Gambling Act 2003

[34] **Stability.** All of Pockets 48 gaming machines are located in their own premises and the question of the ongoing stability of Pockets is not therefore, an issue.

[35] **Profitability.** Prior to the merger, Pockets consistently generated net proceeds well in excess of both the statutory minimum (as if it were a distributor of its net proceeds) or any lesser requirement imposed by way of a licence condition. Furthermore, the forecast for the first 12 months in its merged form anticipates net proceeds at 58.8% of those same 12 months gross proceeds and even allowing for some optimism in the forecasts, suggests a satisfactory projection of its profitability.

[36] **Equity.** The projected year end level of undistributed funds – at 4.7% of gross proceeds – is within DIA's guidelines of between 7 and 9% and is not a cause of concern.

[37] **Liquidity.** Pockets is forecasting a neutral position with regard to working capital and taking the view that the full level of undistributed/unapplied net proceeds should be considered as a Current Liability, would indicate a reasonably insignificant deficit. I have no concerns in this regard.

The implications of section 52A Gambling Act 2003.

[38] On Tuesday 24 February 2015 the Gambling Amendment Bill No. 2 received the Royal Assent and came into force on Tuesday 3 March 2015 as the *Gambling Amendment Act 2015*. Among other issues, it introduced section 52A, headed "*Circumstances in which corporate society may apply net proceeds to authorised purposes*" and subsection (1) provides:

"A corporate society may apply some or all of its net proceeds to an authorised purpose only if the Secretary is satisfied that the corporate society's primary activity is itself an authorised purpose and the conduct of gambling by the corporate society is only incidental to that activity."

[39] I have given previous consideration to the implications of section 52A and its impact on the operation of Pockets and despite advises to the contrary, remain of the view that this new section does have application.

[40] Section 52A allows a corporate society to apply its net proceeds, if (a) the corporate's primary activity is itself an authorised purpose (this point is not in dispute) and (b) the "*..conduct of gambling...*" was only incidental to the society's primary activity.

[41] It is clearly a two-tier test that must be applied.

[42] Therefore, the answer in respect of those two issue - when applied to Pockets - are clearly 'Yes' in terms of (a) above and, in my view, 'No' in terms of (b) above. The question that arises in relation to (b) is whether the "*..conduct of gambling..*" is only "*..incidental..*" to the primary activity of Pockets.

[43] Conduct, in relation to gambling is defined in section 5 of the Act and involves the –

"..organising, using, managing, supervising, and operation (but not playing) gambling or gambling equipment.."

[44] In forecasting its "...proposed gambling operations..." for the 2017/18 year, it includes the incorporation, by merger, of two other external Operator's and those forecasts are drafted around 6 different operations being gaming and 5 other non-gaming cost centres as follows –

- Tokoroa – Shotz Bar
- Tokoroa – Club 56
- Central wine and Coffee
- PDSMC
- Pockets 8 Ball trading

[45] The anticipated financial performance across all 5 non-gaming cost centres for the 2017/18 year, are as follows:

Cost Centre	Profit	Loss
Tokoroa - Sports Bar		\$ 20,065.00
Tokoroa - Club 56		\$ 19,483.00
Central Wine and Coffee	\$ 93,029.00	
PDSMC		\$ 7,967.00
Pockets 8 Ball trading		\$ 1,385,053.00
	\$ 93,029.00	\$ 1,432,568.00
Overall losses from other than Gaming.		\$1,339,539

[46] Taking that same analysis over the last four years, it is clear that apart from substantial net proceeds generated from class 4 gambling and "applied" to their other-than-gaming activities, Pockets would not have survived in its current form.

[47] Over those last 4 years, Pockets have operated 4 different non-gaming cost centres consisting of -

- ✚ Shots Bar and Pool Lounge
- ✚ Central Wine and Coffee
- ✚ Glen Eden Bar.
- ✚ 8 Ball.

[48] Over that same four year period each of those activities have, between them, generated substantial combined losses amounting to almost \$7M as set out in the following table.

	2013/14	2014/15	2015/16	2016/17	TOTAL
Shotz Bar	-\$ 14,218.00	-\$ 29,714.00	-\$ 13,145.00	-\$ 30,012.00	-\$ 87,089.00
Central Bar	-\$ 151,714.00	-\$ 41,494.00	-\$ 32,266.00	\$ 55,266.00	-\$ 170,208.00
Glen Eden Bar	-\$ 7,540.00	-\$ 4,722.00	\$ -	\$ -	-\$ 12,262.00
8 Ball	-\$ 1,906,739.00	-\$ 1,596,061.00	-\$ 1,572,874.00	-\$ 1,619,850.00	-\$ 6,695,524.00
	-\$ 2,080,211.00	-\$ 1,671,991.00	-\$ 1,618,285.00	-\$ 1,594,596.00	-\$ 6,965,083.00

[49] That four year combined loss from other than class 4 gaming, and amounting to \$6.96M increases by a further forecasted \$1.339M loss during 2017/18 to equate to total trading losses over 5 years from 2013/14 – 2017/18 (forecast) of **\$8,304,642**.

[50] Those losses have been totally offset by the application of net proceeds from class 4 Gambling and given the absolute dependency of Pockets on the organising, using, managing and operating of gaming machines and the proceeds generated by those gaming machines, for their very survival, begs the question as to whether this aspect of their total operations is more than simply “..incidental..” to their primary activity.

[51] The need to ensure financial survival was absolutely clear to Pockets at some-time in their history and an alternative and substantial income stream had to be put in place. It is in this context that the “...conduct of gambling...” became an essential aspect of their total operation. This involved the initial purchase and installation of gambling equipment, and the daily supervision, maintenance and updating of that equipment.

[52] To enable that level of net proceeds to be generated over a four year period, and then to be in position to transfer those net proceeds to cover the operational losses in the other 4 cost centres of Pockets caused me concern as to whether the conduct of gambling was, in fact, only an “incidental” aspect of Pockets overall operations.

[53] To come at this issue from another angle, if the operation of gaming equipment was surrendered by Pockets because it was only incidental to their primary objectives around cue sports, it simply could not continue to exist. It is totally and utterly reliant on the operation of gambling equipment to the extent that it is impossible, in my view, to construe it as being simply incidental to Pockets primary activity.

[54] I have discussed this issue with Mike Osmond (Policy) and he is satisfied that section 52A does not have relevance in Pocket’s case and that my approach as set out above, is too heavily focussed on financial considerations and takes little or no cognisance of the “activity” of gambling.

[55] Despite Policy Section’s view I remained concerned that the practical outworking of section 52A of the *Gambling Act 2003* could possibly have severe implications for Pockets.

9(2)(h)

9(2)(h)

[57] That response in itself then raises a subsequent issue. If it did not apply in the context I raise in this report, what was the mischief the amendment was intended to overcome? I have requested an answer to this question from several quarters but have received no responses.

[58] Both Mike Osmond’s view and that expressed by our Legal section focussed on the issue of ‘primary activity’ and gave little heed to the second test in section 52A relating to gambling being *incidental* to that primary activity.

[59] I have therefore researched the meaning of “..incidental..” and the consistent theme is as follows –

- *Happening as a minor accompaniment to something else.*
- *Casual, not essential.*
- *Occurring by chance in connection with something else.*
- *Happening or likely to happen in an unplanned or subordinate conjunction with something else.*

I also considered the antonyms of *'incidental'* and they include concepts such as *planned, necessary, essential* and *vital*, and in my view they fit perfectly with the operation of gaming machines in the premises owned by Pockets.

[60] I then turned to consider the physical gaming activity – not the primary activity - conducted through the various gaming machines operated by Pockets as contemplated in their 2017/18 forecasts.

[61] The total forecasted gross proceeds for 2017/18 is \$2,677,000. Given that gross proceeds are the product of turnover, less return-to-player of between 78-92%, equates to that turnover being in the range of \$12.2M and \$33.5M. If the midpoint of \$22.8M is then re-expressed in terms of a minimum \$2 coin input, means that the equivalent of 11,000,000 \$2 coin inputs between the totalgaming machines operated by Pockets, will take place during the forecast year.

[62] In stating the above I am **not** asserting that Pockets gaming operations are its **'primary activity'** but I am contending that on the basis of:

- (a) the sheer volume of other-than-primary activity through Pockets 48 gaming machines, and
- (b) the financial contribution to Pockets overall operations from gaming each year for at least the past 4 years and intended for the 2017/18 year, and
- (c) the inability of Pockets to survive financially without the operation of gaming machines,

the conduct of gambling is **NOT** merely incidental to Pockets primary activity. I would contend that it is crucial, essential and vital and at the very core of their continued existence. It is not an activity occurring by chance or in an unplanned or subordinate way. It is the "life-blood" of their ongoing operations to the extent that ceasing to operate gaming machines, would spell Pockets demise in its present configurations.

[63] An alternative defence could be raised to the effect that there is no overall harm here inasmuch as the patrons of Pocket are all members and therefore net proceeds from gambling are used for the benefit and interests of those members. The alternative point of view however, is that the annual membership fee of \$5 pa is set at such a level as to be token only and therefore tantamount to a publicly accessible gaming lounge.

[64] Therefore having come to the conclusion I set out above leads me to the view that Pockets may not apply *"..some or all.."* of its net proceeds to its own authorised purposes and accordingly places in jeopardy the entire operations of Pockets 8 Ball Inc.

[65] Consequently, on the basis that Pockets –

- (a) may not apply its net proceeds to its own authorised purposes,
- (b) will require distribution of its net proceeds to external grant applicants, and
- (c) will therefore be unable to continue in its present form,

I **cannot conclude** that its "...*proposed gambling operations...* for the 2017/18 year is financially viable.

Conclusion.

[66] In my view the Pocket's "...*proposed gambling operation..*" for the first year of operation in its merged form **is NOT financially viable** as that term is used in section 52 (1) (c) of the *Gambling Act 2003*.

[67] For completeness, I should advise that in the event you should conclude that my concerns as to the relevance of section 52A are unfounded, then there are no other impediments to a finding of financial viability.

[68] If you should come to that conclusion and are satisfied the licence can be issued, I would recommend the imposition of two conditions, namely –

(a) Pockets provide quarterly financial statements throughout its first full year of operation in its merged form, and

(b) The requirements of section 111 of the *Gambling Act 2003*, as they relate to the cessation of both YOE and RSA, are strictly adhered to and that no gaming assets in value or kind, pass from those two ceasing entities to Pockets in its merged form.

Limited application

[69] It should be noted that this report and its conclusion is solely in respect of the applicant's 'financial viability' and does not express any views on any other aspect of Pockets affairs.

[70] It should also be noted that this report is not reflective of any audit processes and is not therefore a commentary on the appropriateness or otherwise of any of the costs, expenses or incomes reviewed.

9(2)(a) CA
Investigating Accountant,
Licensing Compliance.

Disclaimer

In considering and reporting on the projected financial viability of the Society I have not completed an audit or financial review within the terms of the Institute of Chartered Accountants of Australia and New Zealand guidelines. The opinions expressed are done so on the basis of information and explanations supplied by the directors/trustees of the entity under review. The opinion as to financial viability is made within the constraints of the *Gambling Act 2003* and may not necessarily comply with the general principles of solvency and going concern. I have necessarily relied to a substantial degree on the forecasted performance of the Society. Those forecasts are the sole responsibility of the Directors and my reliance – even in part – upon them cannot be construed as validation by either myself or the Department of Internal Affairs of either the whole or any part of those forecasts as to their accuracy or realism. The opinions expressed herein are solely for the purposes of Class 4 Operator re-licensing and is not to be used in any other context.

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MEMORANDUM

To: The Manager Licensing
The Team Leader GCG Auckland

From: 9(2)(a)

Date: 11 April 2018

Subject: Pockets 8 Ball – Use of Bank accounts in respect of Gaming Costs

Introduction

This report centres around Pockets 8 Ball use of its bank accounts and gaming related costs post the negotiated settlement and a warning letter issued to them in December 2016

As you are aware, from the time this office first looked at Pockets in 2014, difficulties were encountered with the way in which they managed their gaming operation. One of the fundamental problems was funds transitioning in and out of their various accounts and trying to determine what related to gaming and what did not. There seemed little oversight of this by its then committee. To make the point and to ensure that those practises ceased, I issued Pockets 8 Ball with a warning letter in December 2016. That letter clearly spelt out those practises and warned them for offences committed after the introduction of the newly imposed section 105A of the Gambling Act. This section sought to address exactly this type of behaviour.

Since that letter

In December 2017, 9(2)(ba)(i)

It transpired that Pockets had moved its banking business from the ANZ to the BNZ on 3 February 2017.

9(2)(ba)(i)

9(2)(ba)(i) and an examination revealed that costs associated to gaming had been paid from the Clubs general account.

Pockets BNZ bank accounts are defined and operated as follows:

- 00 - General Club account
- 01 - Gaming account
- 02 - 38 Bridge Street housekeeping account where the daily eftpos transactions and the cash for GMP are deposited
- 03 - Pool Lounge (42 Mannering Street) Bar account
- 04 - Pool Lounge (42 Mannering Street) housekeeping account where the daily eftpos transactions and the cash for GMP are deposited
- 05 - Pockets 8 Ball Club Central Wine & Coffee (Café) account
- 06 - Club 56 Tab account. (opened as the new venue at 56 Bridge has a TAB terminal)

Transfers of the GMP are made from the 02 and 04 housekeeping accounts to the dedicated 01 gaming account on a daily basis. I am comfortable with this process.

However, looking at the 00 account, it can be seen that there were 8 transactions in and out of it totalling \$133604.82 and which appear to relate to gaming.

3 relate to payments from this account directly to Inland Revenue for gaming duty amounting to \$94806.45.

Then there are 4 transfers from it to the 01 gaming account for unknown reasons and totalling \$33070.43.

The last is a transfer from the 01 account to the 00 account for \$5727.94 for an unknown reason.

I sent a letter and spreadsheet outlining the transactions to Pockets requesting an explanation. The letter of response from their President Peter Cook is attached.

The explanation provided by Mr Cook raises further questions:

- Did their committee and management take any notice of the December 2016 warning letter issued to them in relation to this very issue.
- Who approved such significant transactions, the response suggests an office person which in itself raises concerns. It suggests that the committee and management still do not have sufficient oversight of their day to day operations.

- Why did they have to meet these fundamental gaming costs from sources other than the gaming account? (I would suggest 9(2)(a) financial viability report offers the reason)

Note that there are further transactions within these statements which I suspect breach section 105A.

I have requested all of Pockets banks statements from their previous bank (the ANZ) for the period spanning from the date of the warning letter until they moved their banking business to the BNZ to establish if there are additional transactions. I have yet to receive those statements but will contact the ANZ today to find out where they are.

LOANS TO POCKETS

9(2)(ba)(i)

This report is submitted for your consideration in respect of an application to licence the merging of Pockets 8 Ball with the Putaruru District Services Memorial Club (Inc.) and The Olde Establishment (Inc.)

9(2)(a)

Gambling Compliance
Hamilton

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Memo

To	Marilyn Little Deputy Chief Executive
Cc	9(2)(a)
From	Maarten Quivooy General Manager Regulatory Services
Date	21 May 2018
Subject	Proposal to establish 30-gaming machine club venue in Tokoroa

Purpose

Colin MacDonald has asked to discuss the above issue with you at your next catch-up meeting with him on 24 May 2018. This memo provides background information to assist you with this.

The issue came to Colin's attention as a result of a letter sent to him (and copied to the Minister of Internal Affairs) from Dr Grant Hewison, a Barrister acting for "Feed Families Not Pokies", a body opposing a proposal to establish a 30-machine club venue in Tokoroa. The letter is attached.

The key point is that the proposal still has to meet Gambling Act requirements for a class 4 licence. There are a number of issues outstanding, which we are investigating.

Background

The Gambling Act provides the Minister of Internal Affairs with the ability to permit more gaming machines at a venue if two or more clubs merge. Merged club venues can operate up to 30 gaming machines¹, provided consent is obtained from the relevant territorial authority. The objective of the ministerial power (which has not been delegated) is to facilitate the continued viability of community-run clubs like chartered clubs and RSAs.

In December 2015, in accordance with its gambling venue policy, the South Waikato District Council agreed that three clubs that wished to merge could operate 30 machines at a venue in Tokoroa. Territorial Authority gambling venue policies are only adopted after mandatory public consultation requirements. Territorial Authorities are also required by the Act to have regard to the social impact of gambling in their districts when adopting a gambling venue policy. The Council subsequently re-confirmed its decision in 2016 and 2017.

In December 2016, we advised Minister Dunne that the Act's requirements for permitting more gaming machines had been met, and recommended that he approve the application. We also advised that even if he approved the application, the merged club would still need to meet the Act's usual criteria for the issue of a licence to operate gaming machines.

¹ Pokie machine venues are normally capped at 18 machines (pre-Gambling Act) or 9 machines (post-Act).

If the licence is issued, the venue will add five machines to the 133 already in Tokoroa. The number of venues in the South Waikato district will reduce by two with an overall reduction in gaming machine numbers by four.

Comment

The Minister's decision to allow the merger has generated extensive media coverage. Its high profile appears to have prompted a question to the Prime Minister, who was asked for her views on the issue at her post-Cabinet press conference on 14 May 2018. (In a brief reply, she mentioned that of all gambling devices, she thought that "pokies are the most problematic", presumably from a harm perspective.)

The primary focus of the opposition to the proposal is the perception that the establishment of a 30-machine venue will be detrimental to social and economic well-being of the people of Tokoroa. Non-casino gaming machines continue to be primary cause of gambling harm in New Zealand. Ideally these sorts of issues would be considered during the process of adopting a territorial authority gambling venue policy. Usually the territorial authority will consider the balance to be struck between realising the benefits of community funding generated by the machines and the drawbacks associated with their harm potential, before finalising its policy.

Current position

In July 2017, we received an application from the merged club for a licence to operate 30 gaming machines at the new venue. The application is still under consideration as it is still not yet clear that it satisfies the Act's requirements.

There are a number of issues outstanding, including whether the club satisfies the Act's financial viability requirements and the possibility of financial misconduct, which are being investigated. The outcome of the investigation will determine whether we issue a licence to operate the gaming machines at the merged club venue.

A proposed reply to Dr Hewison's letter that sets out this position is attached.

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Investigation Report:

Pocket 8 Ball Club Inc



An Investigation by: 9(2)(a) [redacted]
Senior Investigator
9(2)(a) [redacted]
Senior Investigator

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Executive Summary

Pockets 8 Ball Club Inc (Pockets) is an incorporated Society that currently has three venues of which two are hosting gaming machines in Tokoroa. Pockets Pool Lounge in Mannering Street has 16 gaming machines and Pockets 38 Bridge Street has 18 gaming machines.

Previous reports on Pockets completed in 2007/2008 and 2010/2011 reported on a wide range of issues. The questions were if Pockets was a club or not, low membership fees, primary activity, costs, wages, management and lack of governance. These concerns and challenges were mitigated through their legal representative, Jarod True.

Pockets went through some venue expansion. They purchased gaming machines and placed them into a class 4 venue in Auckland and operated them under a venue agreement returning the GMP to them. They took over several class 4 venues in Auckland and converted them into class 4 Club premises. They also attempted this in Rotorua but were refused a liquor license.

The Liquor Licensing Authority, Chairman, District Court Judge Unwin stated that the prime motivation of Pockets was the acquisition of gaming and its revenue and not to conduct cue sports. He found that "... the Club has failed to reach the necessary thresholds to persuade us to issue it with a further club licence in Rotorua." Accordingly the application was refused.

Pockets disposed of the venues and went back to their two Tokoroa venues.

In June 2014 Pockets were inspected by Gambling Inspector 9(2)(a) . 9(2)(a) found that Wendy Cook was at the helm of operations. She was earning a salary of 9(2)(a) 9(2)(a) . 6(d)

It was also found that Wendy used a Pockets credit card to withdraw cash. This was accounted for, by placing the withdrawals on staff purchase ledger which she would pay back through salary deductions and on occasion cash deposits into a Pockets bank account. Whilst this in itself is bad practice it was not illegal.

A negotiated outcome between Pockets and the Department of Internal Affairs (the Department) was reached with the following stipulations:

- Removal of Wendy Cook as venue manager
- 6(d)
- 6(d)
- 6(d)
- Placement of permanent director on Pockets committee
- Resignation of Wilkinson from the committee
- 6(d)
- 6(d)
- 6(d)

- 6(d) [REDACTED]

According to Pockets all these stipulations were adhered to and steps were put in place to ensure that they remain compliant.

During March 2015 the Department received notice of a possible merger between Pockets and The Olde Establishment, a venue with 9 machines in Tokoroa. An anticipated timeline of two years was mentioned in the letter.

During March 2015 the Department issued a formal written warning to Pockets in relation to the use of its bank accounts relating to gaming.

During November 2015 the Department received a further letter informing the Department that the Pataruru District Services Memorial Club (PDSM) would also like to merge with Pockets. The PDSM is licenced for 9 gaming machines.

During December 2015 the South Waikato District Council (SWDC) approved the site at 56 Bridge Street for the merger with some conditions and confirmed the site approval by letter to Harkness Henry on 10 December 2015. According to the manager of Environmental Health at SWDC the council renewed the site approval 6 monthly and that the consent is currently still valid.

9(2)(h) [REDACTED]

- 9(2)(h) [REDACTED]
- 9(2)(h) [REDACTED]
- 9(2)(h) [REDACTED]
- 9(2)(h) [REDACTED]

9(2)(h) [REDACTED]

In the same e-mail Stefan sums up what the Department stated during the last meeting with Jarod True:

- We recognise the Club provides benefit – social hub.
- We want the mergers to proceed. Negative impact if this doesn't occur on the three entities involved.
- No evidence of theft – expenses were paid back
- Significant issues though around how expenditure is carried out and managed, and whether Wendy Cook's past behaviours have been in the best interests of the Club. We believe her removal from the GM position is required.
- Some remedial action has been taken – better financial practices in place.

- Removal of Wendy from the Committee is a good step.
- Looking to diversify the Committee is a good step, but would recommend Jarrod is not added as an independent director.
- We would like to see a review of the governance arrangements of the merged Committee from an accredited organisation.

In a reply to 9(2)(a) on the above 9(2)(a) said that he thinks there is a fundamental difference in how Pockets operates in comparison with other clubs. According to the Act, the definition of a club: “means a voluntary association of persons combined for a purpose other than personal gain”.

A briefing to the Minister by the Department in relation to the merger was forwarded on 8 December 2016. In the briefing the Department recommended the approval of the merger. In the briefing the Department stated that they were working with Pockets to address significant shortcomings in its governance and management, but now had confidence in Pockets after the appointment of new board members and an action plan to address the shortcomings. The merger was approved by the Minister.

Four days after the ministerial consent was granted, a formal warning letter was issued to Pockets on 12 December 2016 for offences against section 105A of the Gambling Act 2003 (the Act) as a result of the way in which Pockets managed their gaming funds. The fundamental problem was the transitioning of funds in and out of various bank accounts. Section 105A(2) of the Act requires that gaming machine profits must remain in their dedicated bank account until used for authorised purposes or to meet the costs of the gambling operation.

On 29 September 2017, investigative accountant, 9(2)(a) concluded that in his view the Pockets proposed gambling operation is not financially viable, but advised that if his concerns as to the relevance of section 52(1) (c) of the Gambling Act 2003 are unfounded then there are no further impediments to a finding of financial viability.

9(2)(a) sent a memo to the manager licensing on 11 April 2018 around the use of bank accounts in respect of gaming costs. He referred to the above mentioned warning letter dated 12 December 2016, to Pockets. Clarke stated that he was contacted by 9(2)(ba)

(i)

On examination of the accounts, 9(2)(a) noticed that gaming associated costs had been paid from the club’s general account. He sent a letter to Pockets requesting an explanation and a response was received from Peter Cook, the president of Pockets. He wrote that the administration staff erred by paying the gaming tax from the wrong account. He said he have emphasised to the administration team the importance of and the legal requirement that all gaming related payments must be paid directly from the gaming account. During our interview Peter commented that the administrator involved, 9(2)(a), made a genuine mistake.

As part of the investigation all persons that made loans to Pockets were interviewed. No illegalities were found around the loans.

The authorised purpose for Pockets is very wide and covers nearly all the expenses needed to run a club, excluding the bar areas. I don't see that the club will financially survive without GMP to pay for the everyday running of the club. Eg Wages, insurance, electricity etc.

Peter Cook has been President of Pockets since its inception and the general manager is his wife Wendy Cook. It does seem that it is run like a family business and not a club. Management and committee members are made up of family and friends. This in itself is not illegal but it raises the question if the committee and officers really represent the members or the Cook's interest.

The remuneration packages of the general manager and gaming manager seems very high for a club like Pockets. There is also 3 administration staff that do the banking for the gaming operation. A comparison was done with the Upper Hutt Cosmopolitan Club that have 7800 members, 30 gaming machines and offers a much wider range of services to its members. Their remuneration was considerable less and their duties more comprehensive. Their membership fees include a \$20.00 once off and then \$36.00 per annum. New members must complete an application form and must be seconded by a current member.

The organisation Feeding Families Not Pokies (FFNP) is opposed to the merger. They were spoken to as part of the investigation. They allege that the process of "refreshing" the Territorial Consent every six months is not correct and also alleges that Ministerial approval under Section 95 (1)(c) was made in error because the merged clubs will be operating two Class 4 venues.

During interview with 9(2)(a) representing the SWDC, he insisted that the process of refreshing the territorial consent every six months is legitimate and that the consent is currently still in place. The second venue at 38 Bridge Street did not form part of the merger but the fact that there was a second venue was mentioned in the letter to the Minister.

The updated draft financial viability of Pockets by the Forensic Accountant dated 3/08/2018 shows that *"Based on the GC1A information provided only, they are financially viable with returns generated and distributed projected to be 59.36% and 57.92 respectively. The working capital deficit of (\$48,138) is a concern, but I note that we have granted club licences on worse projections. UNP is well within the concessionary approach guidelines"*.

The question remains if Pockets is a bona fide club or a commercial enterprise that generate money for the management.

The definition of a club:

Gambling Act	Sale of Liquor Act	SASAA
a voluntary association of persons combined for a purpose other than personal gain	(a) any chartered club; or (b) any club that has as its object, or as one of its objects, participating in or promoting any sport or other recreational activity, otherwise than for gain; or (c) any other voluntary association of persons (whether incorporated or not) combined for any purpose other than gain	(a) is a body corporate having as its object (or as one of its objects) participating in or promoting a sport or other recreational activity, otherwise than for gain; or (b) is a body corporate whose object is not (or none of whose objects is) gain; or (c) holds permanent club charter"

In the Liquor Licensing decision in the Matter of the Sale of Liquor Act 1989 an application by Pockets 8 Ball Club Inc for a Club licence in Rotorua (Pockets 8 Ball Club Incorporated, re [2008] NZLLA 1325 (12 September 2008) the Liquor Licensing Authority stated that the Club has failed to reach the necessary thresholds to persuade them to issue it with a club licence in Rotorua. Some of the reasons that were stated:

- The club failed to satisfy that it continues to promote cue sports otherwise than for gain
- Although Mr True stressed that the club was non-commercial, they found the exactly opposite
- The reason for expansion is to increase the club's profitability
- Believe that the amendments to the constitution were designed to prevent the form of democracy normally associated with membership of a club
- In their view the application is pretence. The potential revenue from the gaming machines has driven the idea.

The merger will reduce the number of gaming machines in Tokoroa by 4 machines but it will increase the gaming machines operated by Pockets by 14 machines. Pockets have another venue at 38 Bridge Street with 18 gaming machines that is not included in the merger. So that will lead to Pockets having 48 gaming machines within a block from each other in the same street, if the merger is approved. I don't see the benefit to club members/society with having two club venues a block from each other in the same street.

The fact that the Pockets dedicated gaming account regularly goes into overdraft shows that they are using GMP that has not been generated yet. All wages and most of the day to day expenses such as telephone, electricity, insurance etc. is paid out of the gaming GMP. This in itself is not illegal but the concern is that without the GMP this club will not be in a position to honour its financial responsibilities?

Reports on Pockets completed as early as 2007/2008 and 2010/2011 had questions around Pockets being a club or not, low membership fees, primary activity, costs, wages, management and lack of governance. This was also reflected by Department's Gambling Inspectors, the Liquor Licensing Board as well as the Waikato Population Health Service.

This is still a concern today and I am not satisfied that the main activity of Pockets is to promote cue sports, but rather a commercial enterprise that uses the club status as a means to make use of the GMP to run the business. This is also reflected by the high remuneration packages of the general manager and gaming manager.

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Introduction

Pockets are an incorporated society that was incorporated on 25 May 1999. According to an altered constitution that was filed with the Companies Office on 29 October 2009 the object of the Club are:

- To conduct, administer and maintain the club for its members and for such persons as are authorised from time to time and in accordance with the terms of any licence granted to the club;
- To provide amenities and cultural activities, and promote sports (in particular amateur cue sports), and generally to provide an atmosphere where the members may meet and enjoy fellowship with one another; and
- Any charitable or cultural purpose that is beneficial to the community or a section of it.

In 2011 another purpose was added:

- Any charitable or cultural purpose that is beneficial to the community or a section of it.

The club has two licenced Class 4 venues. The venues are as follow:

- Pockets Pool Lounge; 42 Mannering street, Tokoroa; 16 Gaming machines,
- Pockets 8 Ball Club (Central Wine & Coffee); 38-44 Bridge Street, Tokoroa; 18 Gaming Machines.

The authorised purpose as per the license of the club is:

- Provision, maintenance and development of Club buildings, furniture, fittings, equipment and grounds. Fund for building extensions, renovations or constructions of new premises, where the principle purpose of the premises is for direct use by society members. Excludes purchase of buildings or property for commercial or investment purposes. Excludes bar areas. Includes payment of the Club's mortgage, rates, insurance, general administration and security costs.
- Assistance to sporting adjuncts within the Club through provision of uniforms, equipment, premises and actual and reasonable expenses to travel to and compete in tournaments with kindred groups.
- Any charitable, cultural purpose or any other purpose that is beneficial to the community or a section of it.

On 19 March 2015 a letter was received by the Department from Harkness Henry lawyers. The letter informed the Department of a possible merger between Pockets and The Olde Establishment, a venue with 9 machines. An anticipated timeline of two years was mentioned in the letter.

On 8 November 2015 a further letter from Harkness Henry were received with an updated version of the merger, informing the Department that the PPDSM would also like to merge with Pockets. Consent was sought for an amendment to the original consent application. Consent was now sought to host 30 gaming machines at 56 Bridge Street, Tokoroa. It explained that the merger will result in gaming machines removed from 3 venues namely:

- Pockets Pool Lounge; 42 Mannering street, Tokoroa; 16 Gaming machines
- The Olde Establishment; 220 Mannering street, Tokoroa; 9 Gaming machines
- Putaruru Club; Buckland street, Putaruru; 9 Gaming machines

The three venues with a total of 34 gaming machines will then be replaced with one venue of 30 gaming machines at 56 Bridge Street. Following the merger the Olde Establishment premises will close and the PDSM Club's premises will remain open as a clubroom/community facility, but without gaming machines.

On 4 December 2015 Pockets applied to the then Minister of Internal Affairs, Hon Peter Dunne for Ministerial consent for the merger of the three clubs in terms of Section 95 of the Gambling Act 2003.

Territorial consent for the merger was granted by the SWDC.

On 8 December 2015 the Department briefed the Minister on the merger. The Department stated that they were working with Pockets to address significant shortcomings in its governance and management, but now had confidence in Pockets after the appointment of new board members and an action plan to address the shortcomings. The Department recommended the approval of the application and it was subsequently approved by the Minister on 12 December 2015.

Four days after the ministerial consent was granted, a formal warning letter was issued to Pockets on 12 December 2016 for offences against section 105A of the Gambling Act 2003 (the Act) as a result of the way in which Pockets managed their gaming funds.

The Investigating Accountant recommended that the issue be escalated to Regulatory Investigations during her review of the financial viability.

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Investigation

After commencing the review of financial viability of Pockets and receiving the documentation from 9(2)(a) to 9(2)(a) regarding Pockets the Investigating Accountant recommended that the issue be escalated to Regulatory Investigations. The reasons for the escalation were stated as:

- The Department sent a letter to Pockets dated 29 August 2016 with findings of its compliance audit, in particular the actions of the then General Manager, Wendy Cook, and the wider committee. The letter refers to actions taken by Pockets to address the Department's concerns, 6(d)
- Pockets was formally warned regarding poor management of bank accounts per s105A of the Gambling Act 2003 in December 2016;
- Pockets changed from banking with ANZ to BNZ. 9(2)(ba)(i)
- 9(2)(ba)(i)
- 9(2)(ba)(i)
- 9(2)(ba)(i)
- 9(2)(ba)(i)
- Today I was informed that 9(2)(a), and that BNZ will be loaning \$360,000 to the club. Neither point has been substantiated, and I doubt the latter will eventuate 9(2)(ba)(i); and

All historical filed documents were perused. Bank statements, loan documentation and file notes were obtained from BNZ by way of section 333 requests and interviews were conducted with key people involved.

Section 117 Notice were sent to Pockets to provide further information.

Bank Accounts

Copies of bank statements for 7 accounts were obtained from ANZ by 9(2)(a). The ANZ accounts were closed and the banking moved BNZ on 3 February 2017.

During interview Wendy Cook and Wiki Tamati said the reason for changing banks were as a result of ANZ not approving a loan and that they were not satisfied with the service they received from ANZ.

Copies of bank statements of all BNZ accounts relating to Pockets were obtained from BNZ Fraud Compliance Unit by way of a section 333 notice. The BNZ accounts were opened on 3 February 2017. The accounts were set up as follows:

- 00 - General Club account
- 01 - Gaming account
- 02 - 38 Bridge Street housekeeping account where the daily eftpos transactions and the cash for GMP are deposited
- 03 - Pool Lounge (42 Mannering Street) bar account
- 04 - Pool Lounge (42 Mannering Street) housekeeping account where the daily eftpos transactions and the cash for GMP are deposited
- 05 - Pockets 8 Ball Club Central Wine & Coffee (Café) account
- 06 - Club 56 Tab account. (Opened as the new venue at 56 Bridge has a TAB terminal)

The venue managers are responsible for banking the venues takings into the housekeeping account. The transfer of Gaming Machine Profit (GMP) into the gaming account is undertaken by the administration staff. 9(2)(a), one of the Administration Officers explained the process for the transfer of funds between the different accounts and the transfer of GMP into the gaming account.

She explained that she gets the amount of the GMP that needs to be banked, online from EMS. She then transfers the GMP from the two housekeeping accounts to the gaming account.

It was noticed that the dedicated gaming account regularly goes into overdraft. This should not be happening as the club cannot use GMP that has not been generated yet.

Interviews

9(2)(ba)(i)

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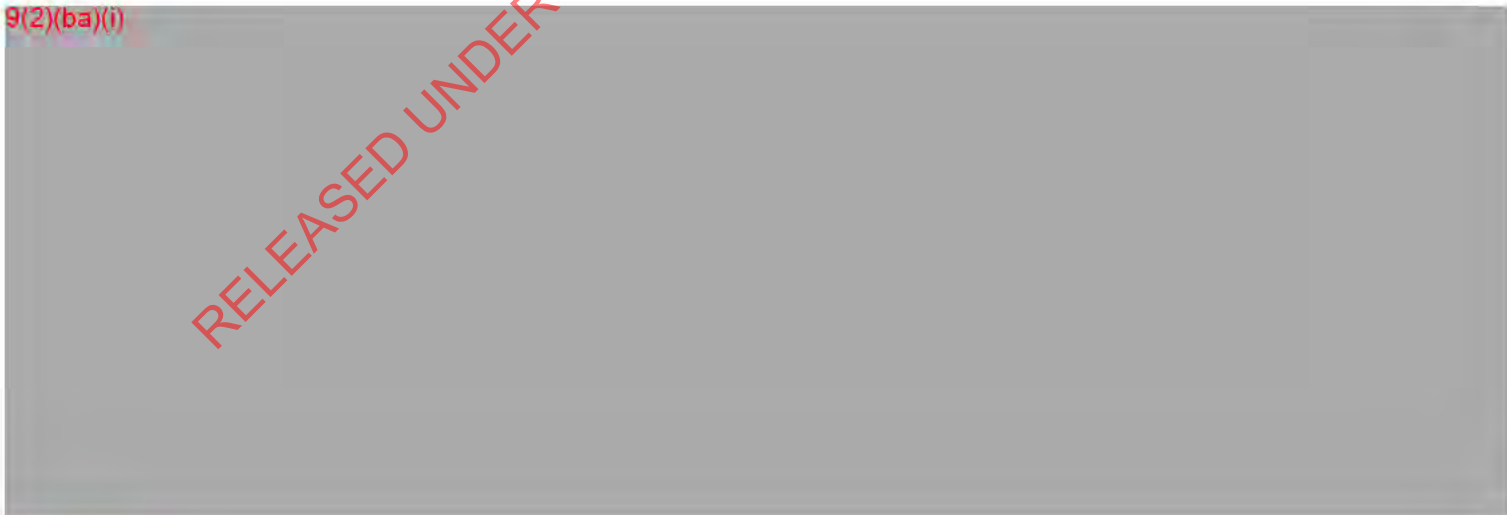
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9(2)(ba)(i)

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Feed Families Not Pokies

On 18 July 2018 the Department had a meeting with Feeding Families Not Pokies (FFNP). Dr Grant Hewison, Brent O'Callahan, David Hay and Colin Bridle represented FFNP.

The terms of the meeting were that the position of the investigators was in obtaining the facts and not to comment, give an opinion or answer questions.

FFNP questions the legal position on the "refreshing" of the Territorial Consent. The issue is the ability to refresh a territorial consent that has been granted but expired and that there is no provision in the Gambling Act for this to occur.

David Hay commented that Pockets is a family business and not a club.

They also felt that the briefing to the Minister was based on bad advice and had the following concerns:

- The Local Authority Consent has expired?
 - Concern that the SWDC approval was 36 to 30 machines where the proposal to the Minister was 34 to 30 machines.
 - The Ministers approval was invalid under Section 95(1) (f) of the Act because the local authority consent was given for a different proposal?
 - The Minister's approval under Section 95 (1)(c) was made in error because the merged clubs will be operating two Class 4 venues?
 - Consent subject to the condition that Pockets are to accept all liabilities for the PDSM. Cannot be imposed under the Act.

Loans

All the persons that made loans to Pocket's were interviewed. Copies of loan agreements were obtained.

Similar loan agreements were completed and the terms are the same for all the loans. The loans are interest only loans with interest paid every month at 10% per annum, with the principal sum due in three years. No purpose for the loan is mentioned in the agreement. Persons interviewed said that they were approached by Wendy Cook. No irregularities regarding the loans were found.

Conclusion

In conclusion I will firstly deal with the reasons for escalation to RI, as stated by the investigative accountant.

- **The first two points regarding the letter dated 29 August 2016 and the warning letter in December 2016:** The investigation found that the negotiated outcome was adhered to and measures put in place to prevent any further noncompliance.
- **Changing banks from ANZ to BNZ and 9(2)(ba)(i):** Pockets were not under obligation to inform the Department of the changing of their bankers. All the lenders were interviewed and no irregularities were found with the process followed for obtaining the loans and the terms of the loans. The statement that **"...club members were of the understanding that their funds were to be used for development of the club..."** were found to be false and that some of the lenders were aware that the funds was also going to be used for the day to day running of Pockets. Wendy Cook, during interview also stated that **"some of the funds were utilised to pay towards their overdraft"**.
- **Lenders had not seen financial statements for the club:** None of the lenders interviewed had any concerns regarding the loans.
- **Today I was informed that 9(2)(a):** This is unsubstantiated.
- **BNZ will be loaning \$360,000 to the club:** This was the granting of an overdraft on the transfer of the accounts from ANZ to BNZ, as Pockets had an overdraft with ANZ.
- 9(2)(ba)(i)
:
9(2)(ba)(i)
9(2)(ba)(i)

In an e-mail dated 13 July 2016 from 9(2)(a) to 9(2)(a), he thought there was a fundamental difference in how Pockets operates in comparison to all other clubs. According to the Act, the definition of a club: *means a voluntary association of persons combined for a purpose other than personal gain.*

9(2)(a) said he don't believe that Pockets operates as a club in terms of the legislation and that they facilitates personal gain. The remuneration of the GM is out of proportion for and the committee has consisted of the same people that are highly remunerated. Peter Cook has been president since the inception of the club.

The way the AGMs are advertised on the notice board, mean very few people attend the meetings. The lack of website maintenance and updating (Under the heading AGM the 2015 AGM minutes is the last entry, under news and events the last entry is also for the AGM dated 29/08/2015) contributes to the members being kept in the dark.

A comparison of remuneration was done with the Upper Hutt Cosmopolitan Club that has 7800 members, 30 gaming machines and offers a much wider range of services to its members. Their remuneration was considerable less and their duties more comprehensive. Their membership fees include a \$20.00 once off and then \$36.00 per annum. New members must complete an application form and must be seconded by a current member. Pockets membership fee is \$12.00 per annum. After a prospective new member complete the application form and paid the fees they can use the facilities.

The Liquor Licensing Authority's decision in the Pockets Rotorua application was that Pockets were not a club was clearly argued and not appealed.

Numerous compliance issues regarding the banking were discovered over a long time and the overdraft of their dedicated gaming account is still an issue.

Taking everything mentioned in this report into consideration, I am not satisfied that the main activity of Pockets is to promote cue sports to its members, but rather a commercial enterprise that uses the club status as a means for personal gain. This is also reflected by the high remuneration packages of the general manager and gaming manager.

For your consideration and completion of this matter.

9(2)(a)

Senior Investigator
Regulatory Investigations

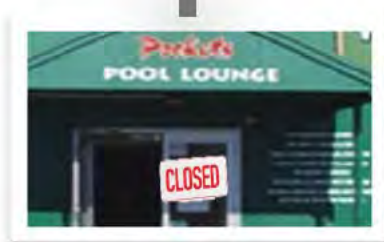
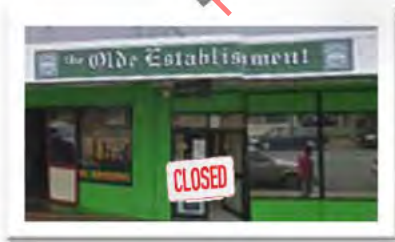
Date: 21/08/2018

POSITION OF POCKETS 8 BALL CLUB AFTER MERGER

2 VENUES WITHIN A BLOCK OF EACH OTHER IN BRIDGE ROAD WITH A TOTAL OF 48 GAMING MACHINES



MOVEMENT OF GAMING MACHINES WITH MERGER



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Email 2 – (Legal Services) to Acting Manager, Licensing Compliance

14 April 2015

This email provides legal advice on two questions raised by a member of the public in relation to the merger of two clubs, Pockets 8 Ball Inc (Pockets) and The Old Establishment.

The questions were summarised in the advice as follows:

- 1) Will the class 4 venue licences for the other two current Pockets venues still be cancelled under section 95 when the merged class 4 operator's licence is issued if the venue licences are not held by either club at the time of the merger?*
- 2) As territorial authority consents expire within six months if an application for a venue licence is not made, can the clubs apply for the new licence within the six months and place the application on hold pending the finalisation of the physical construction work, which may take up to two years.*

A summary of the legal advice was then given:

- 1) If the venues have transferred by the time of the merger, then other corporate societies will hold the class 4 venue licences for those venues, so section 95(6) will not apply to those licences and those licences will not be cancelled. If the venues have not transferred, then the licences will be cancelled.*
- 2) It is possible for the clubs to apply for the merged licence within the six month time period before expiry of the territorial authority consent, and then put the application on hold – whether or not this is appropriate is a policy matter for the Department. Given the timeframes for construction it seems reasonable but I suggest that you inform the clubs that the application must at a minimum include all information required by section 65 of the Gambling Act – it must be a substantive application rather than a placeholder.*

The factual situation of the Pockets merger was then outlined, setting out the various venues and machine numbers, and noting that various venue operators at its venues intended to change corporate societies prior to the merger.

Section 95(6) was then quoted, noting that it required the Secretary to cancel any previous class 4 venue licences “**held by the corporate societies**” (emphasis in original). The advice then concluded that if the Pockets venues had transferred to new operators, they would be subject to new venue licences as class 4 licences are not transferable, and would not be cancelled when the merger took place. If the transfers did not take place, then the venue licences would be cancelled.

Section 100(5) was then outlined, and it was not that there was no requirement that applications be processed within any particular period, although ideally it was best to process them in a timely manner. It was concluded that there was no legal restriction on the clubs making an application and placing it on hold, but it was for the Department to decide if this was acceptable or not in the circumstances.

The advice then stated that in the writer's opinion this would be reasonable, although further information about the timeframe of the construction should be requested to ensure there was no unnecessary delay, and that a substantive application meeting all the requirements of s 65 should be required.

Email 5: Legal Services to Team Leader, Licensing Compliance

12 September 2016, 10:13am, cc'd to Manager, Licensing Compliance

The email stated that the writer was unclear of the policy intent behind section 95(1)(c), agreeing that it was possible, but that the wording was extremely clear that the intention at the time of the merger must be to operate a single venue only.

The writer noted that the arrangement now proposed by Pockets was different from that she had previously advised on, and noted this new arrangement appeared to mean that Pockets did not intend to operate at a single class 4 venue, so the merger should not be permitted to proceed as s 95(1)(c) was not met.

Email 12: Legal Services to Manager and Team Leader, Licensing Compliance

4 October 2016, 10:25am, cc'd to Director, Gambling Compliance

The writer thanked the recipients for attending a meeting on the issue the previous week, and then answered the questions from email 6.

Question: If the territorial authority consent for the merged entity impacted or affected consents held by the merging entities, particularly the subsequent consent for Pockets' 38 Bridge Street venue, on issuing a licence?

Answer: Pockets would not need a further territorial authority licence post-merger because section 98 would not engage, so a venue licence application in respect of 38 Bridge Street would not require consideration of territorial authority consent.

Question: Request for confirmation of the previous advice given that Pockets did not show an intention to operate as a single club at a single class 4 venue, and that the application should fail on that.

Answer: The previous advice in the earlier emails (being Email 2) was repeated and confirmed.

The writer considered that section 95 appeared to prohibit clubs from merging when they intended to operate more than one venue following the merger, and that section 96(6)(b) seemed intended to guard against clubs pretending they had no intention to obtain further venues, but then change the intention post-merger.

Based on this, the writer agreed with the previous advice that it appeared that Pockets did not intend to operate as a single venue.

The reputational issues for the Department in refusing the merger were discussed as discussed at an earlier meeting were canvassed, given the Department had set up a potential expectation that Pockets could carry out the merger in the way it proposed.

Accordingly, the writer considered whether the member of the public's proposed reading of the Act was legally supportable:

- Pockets could have no legitimate expectation that the Secretary act in a certain way where that expectation was based solely on a single instance of an ultra vires act.
- But it is possible for regulators to take a less obvious interpretation of a provision's language to seek a fair and pragmatic result where the acts remain lawful and there is no legal risk.
- For example, it could be argued by someone that the Secretary ought to examine the intention of the merging societies at the time of surrender of the additional license only. However this does not get around the fact that the surrendered venue is still an additional venue that the club intends to resume operating – so this argument is unlikely to succeed and the writer advises against interpreting the Act in this way.
- It could be argued that s 95(1)(c) does not require any particular timeframe for the intention. The writer notes that the six-month prohibition period for new licences could be helpful guidance, but that there is no explicit timeframe given in the Act. Given that there is no explicit timeframe, it could be argued that the Secretary could take a pragmatic approach and interpret s 95(1)(c) as only requiring a very short period for the intention to operate as a single entity.

The writer notes the last argument would be a strained interpretation but notes that the Act is complex, and that rules in it conflict from time to time, and legal fictions are sometimes necessary for the maintenance of the regime.

The legal risk involved with this would stem only from a rival club seeking to publicly highlight the Secretary's alleged departure from the Act's intention, and there is a risk the Minister may disagree with the interpretation and/or lose confidence in the Department's submissions and approach. Accordingly, the writer suggests minimising these risks by taking a clear and intentional decision to create a pragmatic regime based on the alternative interpretation of s 95(1)(c) while planning for legislative reform to better align the Act's provision with the new practice.

If Pockets are denied the merger, an appeal to the Gambling Commission is likely, and while the more obvious interpretation in 95(1)(c) would prevail, this could go either way.

Question: How should section 95(4) be interpreted (regarding the maximum number of machines that may be operated) and does this affect the Pockets merger?

Answer: If the interpretation discussed above is taken, section 95(4) would require the number of machines operated by the club (excluding 38 Bridge St) to be no more than in the territorial authority consent, or the sum of the machines operated by the merging societies at the time of application (not including 38 Bridge St) or 30.