

IN THE MATTER of the Gambling Act 2003
AND on an application by **DUNEDIN CASINOS MANAGEMENT LIMITED** for approval of a new floor plan for the Dunedin casino

BEFORE THE GAMBLING COMMISSION

Members: P Chin (Chief Gambling Commissioner)
M M Lythe
P J Stanley
G L Reeves

Date of Application: 15 November 2010

Date of Decision: 10 December 2010

Date of Notification of Decision: 16 December 2010

DECISION ON AN APPLICATION BY DUNEDIN CASINOS MANAGEMENT LIMITED FOR APPROVAL OF A NEW FLOOR PLAN FOR THE DUNEDIN CASINO

Introduction

1. Dunedin Casinos Management Limited (“**DCML**”) applied to the Commission for approval of a new floor plan under condition 12 of its operator’s licence. DCML sought to reintroduce 10 gaming machines into the casino, deploying them in the casino’s bar.
2. DCML asked that the plan be approved by the Chief Gambling Commissioner and the Executive Director pursuant to their delegated powers under condition 12. The Executive Director and Chief Gambling Commissioner declined to approve the plan, deciding that the application should be considered by the full Commission as they were not satisfied that the placement of the machines in the bar had no potentially adverse effects, as required by condition 12.
3. The relevant licence conditions are as follows:

DCML Operator’s Licence

5. The number of gaming machines in the Gambling Area shall not exceed 180. Each terminal or player station of a multi-terminal or multi-player gaming machine shall be treated as one gaming machine.
12. The Licence Holder shall obtain approval for new floor plans prior to relocating or installing tables or machines in positions not specified in approved floor layouts. When applying, the Licence Holder must submit fresh plans showing the floor layout for the Gambling Area and details of the proposed CCTV layout for consideration. Any change must comply with the



floor layout has no potentially adverse effects. If they are not so satisfied, the proposed floor plan must be referred to the Commission for a decision on approval

4. Sections 11 and 12 of the Act provide as follows:

11. **No increase in casino gambling**
A person must not increase the opportunities for casino gambling
12. **What is increase in casino gambling**
- (1) Decisions on what constitutes an increase in the opportunities for casino gambling are a function and responsibility of the Casino Control Authority, until section 297 of this Act comes into force, and of the Gambling Commission after that.
- (2) An increase in the opportunities for casino gambling includes but is not limited to—
- (a) an increase in the number of gaming machines unless the increase is accompanied by a reduction in the number of table games that the Casino Control Authority, or the Gambling Commission, believes is proportionate;
- (b) an increase in the number of table games unless the increase is accompanied by a reduction in the number of gaming machines that the Casino Control Authority, or the Gambling Commission, believes is proportionate;
- (c) an increase in total player space at table games unless the increase is accompanied by a reduction in other opportunities for casino gambling that the Casino Control Authority, or the Gambling Commission, believes is proportionate.
- (3) Opportunities for casino gambling are not increased—
- (a) by increases, in the Auckland casino, that comply with the Order for the Variation of Conditions of Casino Premises Licence dated 6 December 2002;
- (b) by gambling conducted by the New Zealand Racing Board referred to in section 120.

Submissions by DCML

5. DCML submitted, in summary, that:

- (a) It wants to reintroduce 10 gaming machines into the casino. It had previously removed the machines as they were not "PIDs" compliant. The 10 machines that it wants to reintroduce are "PIDs" compliant.
- (b) The proposal does not raise any matters of regulatory concern as it:
- (i) does not derogate from achieving the purposes of the Act; and
- (ii) does not contribute to the growth of gambling or gambling opportunities; and
- (iii) does not contribute to or exacerbate harm caused by gambling.
- (c) It considered several options regarding the placement of the 10 machines to ensure they can be returned to the Gambling Area in a location area where

gambling has previously been available. It wants to put them in the Grand Café and Bar, which has been used for gambling by way of a TAB wagering facility.

- (d) The 10 machines will be within the casino's designated Gambling Area, they will not increase opportunities for casino gambling, and they do not block any existing egresses
- (e) Christchurch casino has been permitted to operate gaming machines within one of its bars
- (f) Gaming machines have always been in close proximity to the Grand Café and Bar area.
- (g) There remains significant floor space within the confines of level 1 in which gambling does not occur.

Problem Gambling Foundation's (PGF) submissions

6. PGF submitted, in summary, that:

- (a) Dunedin casino is a small casino, and space is used in a compact manner, particularly in the bar/restaurant area. The only place in the casino where there is a possible change of ambience from a primary focus on gambling is in the bar area where the machines will be located.
- (b) DCML's proposed plan shows nothing of the ambience of different areas of the represented space. The bar area has an atmosphere of a small, intimate, private bar with an obstructed view to some gambling tables and some gaming machines. In the corner where DCML proposes to reposition gaming machines, it is almost as if one is not in a casino.
- (c) In comparison, the area just outside the bar area is an area linking the bar with the table games and the gaming machine areas. While it is part of the restaurant, it is irrevocably an extension of the dedicated gambling area.
- (d) The siting of the machines within the bar will mean that there is no place available within the casino with a primary focus on an activity other than gambling. This lessens potential for host responsibility practices.
- (e) Many people in Dunedin go to the casino simply to eat. Under DCML's new proposal, they could not do so without gaming machines being sited in, and



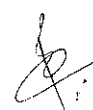
dominating, what is currently a small restaurant. This creates passive prospecting for new gamblers by not providing an otherwise focused area.

- (f) In view of DCML's recent applications, the appearance is created of a business attempting to leverage sales of its most purchased product – gaming machines. While this is usual business practice, it is not sound public health. DCML should be required to offer a balanced mix of gambling and hospitality services with host responsibility as part of both, and the application should be declined.

The Secretary's submissions

7. The Secretary submitted, in summary, that:

- (a) With regard to section 11 of the Act, he does not consider that the reintroduction of the gaming machines would constitute an increase in opportunities for casino gambling. This is because the removal of the 10 gaming machines was only a temporary measure and the casino's licence conditions allow for 180 gaming machines.
- (b) With regard to harm minimisation and prevention, there are potential issues with the proposal as the bar acts as a respite area offering patrons a break from casino gambling. This would no longer be available if DCML's proposal was implemented.
- (c) It could be argued that the bar area does not act as a respite area since gambling is offered in the form of TAB and sports betting. However he notes:
- (i) Casino gambling is not currently offered in the bar, so the bar is a respite area for table game and gaming machine gamblers.
- (ii) Gaming machine gambling is the most harmful form of gambling, and is more harmful than sports betting. Placing gaming machines in the bar area may lead to a more harmful environment for bar patrons, sports betters and gaming machine and table game gamblers seeking a break from casino gambling.
- (iii) A larger number of problem gamblers experience problems with gaming machines compared to sports betting. Moreover, many people who experience gambling problems with gaming machines do not have issues with other forms of gambling, including sports betting. As such, the bar



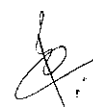
area may offer respite to problem gamblers whose problems are not limited to sports betting.

- (iv) Unlike gaming machine gambling, the opportunity to place sports bets and collect winnings is not continuously available.
- (d) Casino security and gaming staff appear to use the bar area for interventions with patrons. Such interventions could be hindered by the presence of gaming machines.
- (e) He does not consider that DCML's proposal is consistent with its harm prevention and minimisation requirements. If DCML were to reintroduce the 10 gaming machines to a more suitable area of the casino, this would help preserve harm minimisation benefits currently provided by the bar area.

DCML's submissions in reply

8. In reply, DCML submitted that:

- (a) Patrons enter casinos knowing that they will be surrounded by gambling opportunities.
- (b) Should a patron need to be spoken to, it is common for staff to speak to the patron in the position where s/he is located. The exception is when a patron is playing on a table game with other players, when the patron would usually be asked to step away to a more discrete location. Sometimes the café area is appropriate for this, but it is rare that such a conversation would take place in the bar.
- (c) When gambling related intervention escalates towards exclusion, the patron is removed from the Gambling Area altogether and taken to a meeting room on another level.
- (d) The layout of the Dunedin casino makes access to respite areas relatively easy – the main entrance and smokers balcony are respite areas, as is the entire ground floor, including Café D'Oro. All of these spaces are in close proximity to the Gambling Area (if not within it).
- (e) In response to PGF's submissions, it is not correct that many of its recent applications are simply intended to promote sales of gaming machines. In any event, those applications were all approved by the Commission, and it is

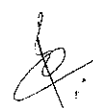


operating a legal business and should be permitted to do so in a manner that makes the property more attractive to patrons

- (f) The machines are proposed to be positioned in the bar area, not in the café/restaurant which predominantly surrounds the main entrance stairwell.
- (g) Given the measures already in place to address potential harm within the casino, there are no issues of regulatory concern.
- (h) Its core business is gambling and it manages a very good balance between gambling and non-gambling areas.

Analysis

9. The notion of DCML reintroducing 10 gaming machines into the Dunedin casino did not raise any issues of regulatory concern for the Commission. As DCML and the Secretary correctly identified, DCML currently operates 170 machines and is permitted by condition 5 of its operator's licence to operate up to 180 machines. The proposal would not, therefore, increase in opportunities for casino gambling in breach of sections 11 and 12 of the Act.
10. However the non-approval of the floor plan by delegation, and the subsequent submissions by PGF and the Secretary highlighted a potential problem with DCML's proposed placement of the machines; the concern being that DCML's harm minimisation and host responsibility obligations would be undermined by the machines being in the casino's bar
11. The Commission considered whether the submitters' concerns had any validity. The Commission also considered that the purpose of the Act is, amongst other things, to prevent and minimise harm caused by gambling, including problem gambling.
12. As a preliminary point, the Commission notes that the non-approval of the plan by the Chief Gambling Commissioner and Executive Director does not mean that the application cannot now be approved by the full Commission. It simply means that the Chief Gambling Commissioner and the Executive Director did not consider the application to be so clear-cut that it could be approved without the need to refer the matter to the full Commission.
13. On balance, the Commission considered that DCML's proposal did not raise any issues of regulatory concern. In reaching this decision, the Commission noted that:



- (a) the casino and its staff are obliged to exercise the same harm minimisation and host responsibility functions regardless of where in the casino's Gambling Area the machines are placed.
- (b) the machines will be placed in the casino's bar. This will still allow casino staff to meet with patrons, and intervene if necessary, in areas away from gambling product;
- (c) gambling is a casino's core business and people who enter a casino should be fully cognisant that gambling takes place there, regardless of whether they enter the casino only to dine or drink;
- (d) the machines will be placed in the casino's bar, which is within casino's designated Gambling Area. DCML's proposal will not, therefore, extend the Gambling Area into the sole remaining non-gambling area at the casino;
- (e) the bar already offers gambling (albeit not by way of machines or tables);
- (f) there would be an artificiality to not allowing the application when gaming machines are only several metres away from the bar in any event.

Decision of the Commission

14. The Commission approved DCML's new floor plan (**attached**), under condition 12 of its DCML's operator's licence.



Peter Chin
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

16 December 2010

