

IN THE MATTER of the Gambling Act 2003
AND of an appeal by **THE LION**
FOUNDATION

BEFORE A DIVISION OF THE GAMBLING COMMISSION

Members: P Chin (Chief Gambling Commissioner)
K M Ford
P J Stanley

Date of Application: 21 November 2005

Date of Decision: 8 June 2006

Date of Notification of Decision: 30 June 2006

DECISION
ON AN APPEAL BY THE LION FOUNDATION

Appeal

1. The Lion Foundation ("**Lion**") appealed under section 77 of the Gambling Act 2003 (the "**Act**") against decisions by the Secretary for Internal Affairs (the "**Secretary**") to impose conditions on 11 venue licences held by Lion.
2. Lion requested that the Commission reverse the Secretary's decision for each of the venues. The Secretary asked the Commission to confirm the decision to impose the condition in each case.

The Gambling Act 2003

3. The key sections of the Act for this appeal are sections 67 and 70. These sections (in part) are as follows:

67. Grounds for granting class 4 venue licence

- (1) The Secretary must refuse to grant a class 4 venue licence unless the Secretary is satisfied that –
 - (b) the possibility of persons under 18 years old gaining access to class 4 gambling at the class 4 venue is minimal; and

70. Content and conditions of class 4 venue licence

- (2) The conditions that the Secretary may add to a class 4 venue licence include –
 - (b) conditions to minimise the possibility of persons under 18 years old gaining access to class 4 gambling at the class 4 venue

- (g) procedures to encourage responsible gambling at the venue:
- (i) any other conditions consistent with this Act that the Secretary considers will promote or ensure compliance with this Act

Facts

4. This appeal has arisen because the 11 venues in question each have two entrances (one internal, one external) into their gaming rooms. The Secretary is concerned that persons under the age of 18 could use the external entrances to gain access to gaming machines at the venues. The Secretary has also filed evidence suggesting that existence of external entrances directly into a gaming room may encourage problem gamblers to use the particular class 4 gambling facilities.
5. The 11 venues (the "**venues**") in question are:
 - The Bowling Green Hotel, Dunedin
 - The Cambridge Hotel, Wellington
 - The Empire Hotel, Featherston
 - The Clarendon Hotel, Dunedin
 - Hennessey's, Rotorua
 - Mitchell's Tavern, Dunedin
 - Mad Dogs Sports Bar, Tauranga
 - The Stumble Inn Cafe, New Plymouth
 - The Brew Shack, Napier
 - The Playhouse, Auckland
 - Home Bar, Tauranga
6. By letter dated 29 October 2004, the Secretary wrote to Lion proposing to add a condition to each of the venue 11 licences which would require "... the external door giving direct access to the gaming room ... to be closed." The Secretary invited Lion to make submissions on why this condition should not be added.
7. Lion made the submissions by letter dated 8 December 2004.
8. By letter dated 1 November 2005, the Secretary wrote to Lion stating that he was not satisfied that the possibility of persons under the age of 18 years gaining access to the gaming machines at the venues is minimal, and in accordance with sections 70(2)(b) and 70(3)(b) of the Act, added the following licence condition to each licence:

Any external entrances into the gaming machine area must remain closed and locked at all times that the gaming machines are in operation, and may only be used to meet fire, health and safety regulations specific to the venue. The internal entrance(s) to the gaming machine area must be in direct line of sight to the main bar serving area.

9. Each of the venues was visited by a member of the Division on at least one occasion in the period May-June 2006. Commissioners visited the venues as members of the public, unaccompanied by representatives of either party, the purpose being for Commissioners to gain an impression of the layout and operating practices at each venue which had been represented to the Commission in plans, photographs and in evidence.

Submissions on behalf of Lion

10. Lion's primary submission was that the possibility of persons under 18 years of age gaining access to class 4 gambling at each of the 11 venues is minimal and there is no need for the new condition.
11. Lion also submitted:
 - (a) The imposed condition is unworkable and impractical as:
 - (i) it attempts to impose controls on entrances into "the gaming machine area" when this term is not statutorily defined. The new condition is therefore uncertain; and
 - (ii) in attempting to control physical access into a venue (as opposed to controlling access to the activity of class 4 gambling), the condition goes beyond what is contemplated by the Act; and
 - (iii) to read "gaming machine area" to be the same as "gambling area" would require all entrances into the relevant class 4 venue to be closed and locked.
 - (b) The Secretary's power to impose class 4 venue licence conditions is confined to conditions that minimise the possibility of those under 18 years accessing class 4 gambling under section 70(2)(b). In relation to that subsection, Lion submitted:
 - (i) the Secretary has incorrectly concluded that the possibility of those under 18 gaining access to gambling is minimised only in situations where bar staff have a direct line of sight from the bar to the gaming machines. This is an unlawful fetter on the exercise of the Secretary's discretion to impose conditions under section 70(2)(b); and
 - (ii) the proper approach is for the Secretary to consider the facilities and procedures in place at each venue and assess whether they satisfy the requirements of sections 67(1)(b) and 70(2)(b); and
 - (iii) the Secretary has not provided any information on which it can reasonably be concluded that there is a risk at any of the 11 venues of those under 18 years gaining access to class 4 gambling.
 - (c) The condition is unnecessary and is prejudicial to commercial activities at the venues, given the other measures in place at each venue. These measures (which, for ease of reference, will be referred to as "general measures" in this decision) include a combination of CCTV, audible door alarms fitted to external

doors, R18 signage, liquor licences and routine checking of the gaming areas by trained staff. Lion also stated that none of the venues have a history of underage participation in gaming machine play at the venues.

12. In addition to the general measures in place at each venue, described above, Lion submitted that three of its venues have additional measures for ensuring access by minors is minimised, as follows:

- (a) the Bowling Green Hotel – has a staffed gaming booth inside the gaming room;
- (b) the Cambridge Hotel – has TAB staff and hotel reception staff located near to the secondary entrance;
- (c) the Empire Hotel – has service hatchways at either end of the gaming room, which allow staff to look into the gaming room.

Submissions by the Secretary

13. The Secretary's primary submission was that the general and additional measures currently in place at each of the 11 venues were inadequate to ensure that the possibility of persons aged under 18 gaining access to class 4 gambling at those venues is minimal. In support, the Secretary submitted:

- (a) CCTV effectiveness as a preventive measure is questionable in terms of image quality, appropriate image identification, and the likelihood of staff paying attention when performing their primary duties; and
- (b) door alarms are a repetitive measure which it cannot be assumed will result in diligent checks; and
- (c) regular checks of the gaming area are dependent upon staff diligence in the face of other work pressures; and
- (d) the Secretary prefers "active" rather than "passive" supervision of the gaming machine area; and
- (e) liquor licensing of the venue as a whole is immaterial if a gambler is undetected in a segregated, externally accessed gaming room.

14. In addition to his primary submission, the Secretary submitted:

- (a) in imposing the condition, he acted within the bounds of the Act's intent because in order to comply with section 67(1)(b), he must be satisfied that the possibility of underage access to class 4 gambling is minimal; and

- (b) he agrees that reference to class 4 gambling in section 67(1)(b) is in relation to the activity of gambling itself (as opposed to access to the venue); and
- (c) use of the terms “gaming machine area” and “gaming area” in the condition does not conflict with the statutorily defined “gambling area”; and
- (d) he did not apply a rigid and predetermined policy to impose the condition on all 11 venue licences – he approached each venue on a case-by-case basis; and
- (e) a series of other considerations should be taken into account when considering the appropriateness of the imposed condition, including:
 - (i) evidence suggesting that underage gambling in New Zealand is a reality; and
 - (ii) there is minimal or no prejudice involved in the venues complying with the licence condition; and
 - (iii) the closure of direct, unsupervised access has positive implications in terms of harm prevention and minimisation.

Lion’s submissions in reply

15. In reply, Lion submitted:

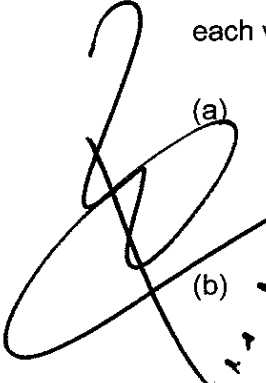
- (a) the supervision at the 11 venues is “active” supervision of a very high standard, and allows monitoring and assessment of every person who attempts to access class 4 gambling at each venue; and
- (b) the Secretary’s criticisms of the quality of the security equipment are ill-founded as all 11 venues have high quality CCTV systems and door alarms; and
- (c) the Act makes no reference to “active” as opposed to “passive” supervision of gambling venues; and
- (d) the existing measures are minimising the possibility of minors gaining access to class 4 gambling, and there is no evidence that underage gambling has been taking place at any of the 11 venues; and
- (e) the Secretary’s imposition of the condition for problem gambling reasons is not relevant, and to the extent that the Commission takes it into consideration, it should give little weight to the Secretary’s evidence and submissions on this point.

Preliminary matters

16. In its submissions, Lion alleged deficiencies in the information before the Secretary. As the Commission noted in its decision on the pre-hearing application to this appeal (GC06/06), the appeal function exercised by the Commission under section 77 of the Act is conducted on a *de novo* basis. This means that the Commission considers the matter afresh, having regard to all the information before it, irrespective of whether the Secretary had that information and whether the original information justified the decision.
17. The Commission acknowledges that sections 67(1)(b) and 70(2)(b) refer to "access to class 4 gambling", rather than "access to the class 4 venue" but does not consider, as Lion submits, that controlling physical access to the venue or parts of it (as opposed to access to gambling activity) necessarily goes beyond the scope of the Act. The Commission considers that, in many (but not necessarily all) circumstances, one way of minimising potential access to class 4 gambling by minors may be to control access to the area where the gaming machines are located. Controlling access to the gaming machine area is not the only means of minimising the potential for prohibited access to class 4 gambling, but is an alternative to measures such as full time supervision of the gaming machines.
18. Both parties commented extensively on whether measures were "active" or "passive", with the implicit suggestion that the characterisation of the nature of supervision as active or passive was a key consideration, possibly even a legal issue. It is not. It does not matter how measures to minimise the potential for prohibited class 4 gambling are characterised, only whether their effect is to minimise the risk. The Commission considered that, contrary to certain suggestions made, locked access could be described as a passive measure (ie it has effect without active human intervention) whereas alarm and CCTV monitors are more active measures (ie they are ineffective without alert and attentive staff). There is, however, nothing inherently superior about either description, active or passive, and the Commission has not taken the issue further in its decision.

Key issues

19. The key issue is a matter of factual assessment – whether for each of the venues the new condition is a reasonable one to minimise the risk of persons under 18 years gaining access to class 4 gambling. In making this assessment, the Commission considered for each venue the following:

- 
- (a) in the absence of the condition, are the measures in place at the venue sufficient to satisfy the Commission that the possibility of minors gaining access to class 4 gambling is minimal?
- (b) will the imposition of the condition at the venue minimise the risk of access?

(c) is the condition appropriately imposed for reasons other than risk of access by minors such as problem gambling and harm minimisation?

(d) is the condition reasonable in all of the circumstances of that venue?

Legal test

20. Under section 67(1)(b) of the Act, the Secretary (and the Commission on appeal) must be satisfied that the possibility of minors gaining access to class 4 gambling at class 4 venues is minimal before a class 4 venue licence can be granted or renewed.
21. The possibility of access is assessed individually, not collectively across all 11 venues. If the Secretary (or the Commission on appeal) is not satisfied that the possibility is minimal, rather than revoking the licence, conditions can be added to the venue licence to minimise the possibility of access, (section 70(2)(b)).
22. Section 67(1)(b) does not require the Commission (or the Secretary at first instance) to consider *actual* access by minors. Rather it is required to consider the *possibility* of access by minors. The Pocket Oxford Dictionary defines "possibility" as "state or fact of being possible; thing that may exist or happen". "Possible" is defined as "capable of existing, happening, being done, etc." The Commission is, therefore, required to consider the extent to which minors *could* gain access.
23. The Pocket Oxford Dictionary defines "minimal" as "being related to a minimum, very small or slight." "Minimum" is defined as "least amount possible, attained, usual, etc." In the context of section 67(1)(b), the Commission considers that "minimal" means "very small or slight", and not the more restrictive definition of "the least possible in size." It regards "minimise" in section 70(2)(b) as meaning to "make smaller" rather than to "make as small as possible".
24. The test that the Commission believes that it (and the Secretary at first instance) is required to apply, is to consider each venue individually and assess whether the possibility of persons under 18 years old gaining access to class 4 gambling (as opposed to access to the venue itself) at the class 4 venue is very small or slight ("minimal").
25. If, on this test, the possibility of access were already minimal, the justification for the imposition of a condition under section 70(2)(b) would be dubious. If the possibility were something greater than minimal, a condition that reduced the possibility of access and which was reasonable in all the circumstances would be appropriate.
26. Section 70(2) provides the Secretary with broad powers to impose conditions, but, in addition to the express statutory limitations, further constraints on the Secretary's power are implied by law. There is a presumption that, when conferring the power to impose

conditions on an authority, Parliament intends that the power must be exercised reasonably and for proper purposes.

27. In New Zealand, the constraints on condition making powers have been explored in the resource management context. Section 108 of the Resource Management Act 1991 provides that, if a consent authority decides to grant a resource consent, it may do so subject to conditions. In addition to meeting the express stipulations of the section, the Environment Court has held that a condition must satisfy what have become known as the *Newbury* tests, namely, that the condition must:

- be for a resource management purpose and not for any ulterior purpose;
- fairly and reasonably relate to the proposal which is the subject of consent; and
- be reasonable.

28. These principles are drawn from the House of Lords case *Newbury District Council v Secretary of State for the Environment* [1980] 1 All ER 731. In *Newbury*, the test for reasonableness was expressed as being the requirement that a condition must not be so unreasonable that no reasonable consent authority could have approved it. The Court in *Newbury* was a court of review, not an appellate body considering an appeal from the original decision maker on a *de novo* basis. The *Newbury* test for unreasonableness adopted the usual formulation of reasonableness for courts of review since *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223, but this is not an appropriate approach either for the original decision maker or for an appellate body reconsidering the original decision on its merits. The *Wednesbury* test is not relevant in determining the scope of statutory appeal rights but is “directed solely to the supervisory jurisdiction of the Courts by way of judicial review...” (*Shotover Gorge Jet Boats v Jamieson* [1987] 1 NZLR 437, 439 (1.50) per Cooke, P). The common statutory appellate jurisdiction, such as that of the Commission, is far wider, involving a *de novo* consideration of the decision in which the appellate body has a duty to reach its own independent conclusion on the information before it.

29. This approach to the *Newbury* test has been adopted in the Environment Court, making the distinction between a court of judicial review and an appellate court undertaking a merit review and making its own judgment on the appropriateness of a condition (*Far East Investments v Auckland City Council* unreported, EC Auckland, A048/01, 15 May 2001 Sheppard J, para 70). Rather than limiting its consideration to whether the condition is so unreasonable that no reasonable consent authority could have imposed it, the Court ultimately considers whether the condition is “fair and reasonable in the circumstances”.

30. The Commission considers that, as it is required to determine the matter afresh, having regard to all the information before it, and without being bound by the Secretary's view, it is required, in deciding whether to confirm, vary, or reverse the decision to impose the condition, to consider whether the condition is fair and reasonable in the circumstances. In making its assessment, it takes the following into account:

- Whether the condition is a result of process of reason rather than a whim or arbitrariness;
- Whether the condition is proportionate. This involves weighing the benefits gained from imposing the condition compared to the costs and the detrimental effects incurred;
- Whether the condition is fair both to the individual faced with the condition and the community.

31. Whether a condition is reasonable will depend upon the specific circumstances at each venue. In each case, the Commission has considered the position in each venue, including whether the condition was fair (both to the licence holder and the community) and whether any likely detriment suffered as a result of the condition is disproportionate to the likely reduction in risk of access by minors to gaming machines.

General observations

32. At least in part as a result of the observations of Commissioners, the Commission has concerns about the adequacy of alarms and CCTV monitoring as a means of ensuring that the possibility of access to class 4 gambling by minors is minimal. The concern is not with the adequacy of the technology so much as the extent to which their effectiveness relies upon attentiveness by bar staff. Commissioners' own observations of staff behaviour at the 11 venues supported the doubts raised by the Secretary that busy bar staff were unlikely to pay sufficient attention to alarms and CCTV monitors. Commissioners noted in a number of instances that monitors were switched off and that alarms were inaudible (despite close proximity of observers to the bar area). Commissioners did not observe any checks by staff of the gaming rooms at any of the venues during their visits.

The Bowling Green

33. The Commission considered whether, in the absence of the condition, the possibility of minors gaining access to the class 4 gambling at the Bowling Green is minimal, and determined that it is not.

34. The Commission noted that, in addition to the general measures, the Bowling Green has a booth inside the gaming machine area. Lion submitted that this booth is staffed whenever the gaming machines are in operation and that the booth staff monitor and service gaming patrons and the gaming machines. In response, the Secretary submitted that the gaming booth is not permanently staffed, a contention supported by a sign near to the booth door indicating that EFTPOS is available from the bar whenever the office is closed.
35. The Commission noted that the Bowling Green is a busy bar with a youthful clientele. In the circumstances, and notwithstanding the additional protection offered by the venue, the Commission concluded that the risk of access was not minimal, and that the imposition of a condition under section 70(2)(b) was appropriate.
36. The Commission next considered whether the condition imposed by the Secretary, requiring the licence holder to close the external door, was potentially effective in minimising the possibility of underage access. Lion questioned the effectiveness of the measure, and implied that the condition was an alternative to existing measures, whereas the new measure is or can be, additional. The Commission concluded that the condition would potentially reduce the possibility of access by minors to class 4 gambling as closing the external entrance would require minors who wanted to access the gaming machines to enter the main part of the venue before entering the gaming room.
37. The Commission also concluded that the condition was reasonable, as any foreseeable detriment suffered as a result would not be disproportionate to this benefit. The Commission accepted that the closing of the secondary door may cause inconvenience, but noted there are other entrances that allow access into the Bowling Green.
38. For the sake of clarity, the Commission decided to amend the condition for this venue as the secondary access door is inside the Frederick Street foyer entrance. The condition now reads:

The access door into the gaming machine area located inside the Frederick Street foyer entrance must remain closed and locked at all times that the gaming machines are in operation, and may only be used to meet fire, health and safety regulations specific to the venue. The internal entrance(s) to the gaming machine area must be in direct line of sight to the main bar serving area.

The Cambridge Hotel

39. The Commission noted that, in addition to the general measures, the Cambridge Hotel has a staff member adjacent to the gaming room who services the hotel's TAB and gaming room facilities. It also noted that hotel reception staff are located near to the secondary door and have a view of this door via a mirror fixed on the opposite wall. The effectiveness of these additional measures depends, of course, on staff being present

and actively monitoring. On the two separate occasions when a Commissioner and Secretariat staff member visited, the front desk at reception was not staffed. The TAB facility was staffed on only one of two occasions. This suggested to the Commission that the additional surveillance practices relied upon by Lion do not always occur.

40. The Commission concluded in the circumstances that the possibility of minors gaining access to the class 4 gambling is not minimal and that the imposition of a condition under section 70(2)(b) minimising access was appropriate, for the reasons set out above. The Commission determined that the condition would potentially reduce the possibility of access by minors to class 4 gambling, for the reason set out above in the discussion of the Bowling Green venue.
41. The Commission next considered whether the condition was reasonable, given the circumstances of this venue, and decided that it was. The Commission noted Mr Cheer's evidence in reply for Lion, where he stated (at paragraph 41 of his affidavit) that should the door under appeal be closed, hotel guests will be inconvenienced by being required to exit the hotel and walk around the exterior of the building before re-entering the bar via the main external doors. The Commission accepted that this would be inconvenient, but that this inconvenience was not disproportionate to the benefit of reducing the possibility of access by minors to the gaming machines. It also noted that it may be possible to provide alternative access from the hotel to the bar.
42. For the sake of clarity, the Commission decided to amend the condition for this venue as the secondary access door is inside the hotel's main foyer. The condition now reads:

The access door into the gaming machine area located inside the main foyer of the hotel must remain closed and locked at all times that the gaming machines are in operation, and may only be used to meet fire, health and safety regulations specific to the venue. The internal entrance(s) to the gaming machine area must be in direct line of sight to the main bar serving area.

The Empire Hotel

43. The Commission observed that the Empire Hotel is a small country pub, with a young clientele and a busy bar on occasions. The Commission noted that in addition to the general measures, the Empire Hotel has service hatchways at either end of the gaming room, which, Lion submitted and the Commission observed, provide staff with a view into the gaming room.
44. The Commission determined that the possibility of minors gaining access to the class 4 gambling is not minimal and that the imposition of a condition under section 70(2)(b) minimising access was appropriate for the reasons set out above. The Commission determined that the condition would potentially reduce the possibility of access by minors to class 4 gambling, for the reason set out above.

45. The Commission determined that the condition was reasonable, given the circumstances of this venue, and that any detriment suffered as a result would not be disproportionate to the benefit of reduced risk. The Commission accepted that closing the secondary door would cause inconvenience, but noted that there are two other entrances to allow access into the Empire Hotel.

Clarendon Hotel, Dunedin

46. This Commission noted that this venue has general measures described above. For the reasons set out above, the Commission considers that these do not, of themselves, ensure that the possibility of minors gaining access to the class 4 gambling is minimal. In order to minimise the risk, the Secretary has correctly imposed the condition under section 70(2)(b). The Commission determined that the condition would potentially reduce the possibility of access by minors to class 4 gambling, for the reason set out above.
47. The Commission decided that the condition was reasonable, given all of the circumstances of this venue. The Commission accepted that closing the secondary door would cause inconvenience, but noted that there are other entrances into this venue. The Commission also noted that the door in question is locked during the evening for security reasons without causing undue inconvenience.

Hennessy's, Rotorua

48. This Commission noted that this venue has general measures described above. For the reasons set out above, it determined that the possibility of minors gaining access to the class 4 gambling is not minimal and that the condition was correctly imposed under section 70(2)(b). The Commission determined that the condition would potentially reduce the possibility of access by minors to class 4 gambling, for the reason set out above.
49. The Commission determined that the condition was reasonable, noting that another entrance into Hennessy's is very near to the entrance which the Secretary has required be closed. The Commissioner who visited this venue also noted that the external entrance in question was closed in any event, without any apparent undue inconvenience.

Mitchell's Tavern

50. The Commission noted that this venue has general measures. For the reasons set out above, the Commission considered that the possibility of minors gaining access to the class 4 gambling is not minimal and a condition was correctly imposed under section 70(2)(b). The Commission determined that the condition would potentially reduce the possibility of access by minors to class 4 gambling, for the reason set out above.
51. The Commission considered that the condition was reasonable, given all of the circumstances of this venue, as it would reduce the possibility of access by minors to

class 4 gambling. Any foreseeable detriment suffered as a result was considered not to be disproportionate to this benefit. The Commission accepted that closing the secondary door may cause inconvenience but noted that there is another entranceway that will allow patrons to enter the venue from the car park, as well as the main entrance at the front of the Tavern.

Mad Dogs Sports Bar, Tauranga

52. The Commission noted that this venue has general measures. For the reasons set out above, the Commission considered that the possibility of minors gaining access to the class 4 gambling is not minimal and a condition was correctly imposed under section 70(2)(b). The Commission determined that the condition would potentially reduce the possibility of access by minors to class 4 gambling, for the reason set out above.
53. The Commission considered that the condition was reasonable, given all of the circumstances of this venue, as it would reduce the possibility of access by minors to class 4 gambling. Any foreseeable detriment suffered as a result was considered not to be disproportionate to this benefit. The Commission accepted that closing the secondary door may cause inconvenience but noted that there are other entrances to allow access into this venue.

The Brew Shack, Napier

54. This Commission noted that this venue has general measures. For the reasons set out above, the Commission considered that the possibility of minors gaining access to class 4 gambling is not minimal and that the condition was correctly imposed under section 70(2)(b). The Commission determined that the condition would potentially reduce the possibility of access by minors to class 4 gambling, for the reason set out above.
55. The Commission considered whether the condition was reasonable, given all of the circumstances of this venue, and decided that it is. The Commission considered that any foreseeable detriment suffered as a result would not be disproportionate to the benefit of minimising the possibility of access by minors. The Commission accepted that closing the secondary door may cause inconvenience, but noted that there are other entrances to allow access into the venue.

The Playhouse, Auckland

56. This Commission noted that this venue has general measures. For the reasons set out above, the Commission considered that the possibility of access by minors is not minimal and that the condition was properly imposed under section 70(2)(b) to minimise this possibility. The Commission determined that the condition would potentially reduce the possibility of access by minors to class 4 gambling, for the reason set out above.

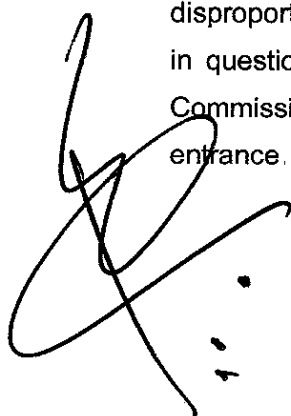
57. The Commission considered that the condition was reasonable, given all of the circumstances of this venue, as it would reduce the possibility of access by minors to class 4 gambling. Any foreseeable detriment suffered as a result would not be disproportionate to this benefit. The Commission noted that the main entrance into this venue is located very near to the external door and that the external door was closed, in any event, when visited by the Commissioner without any apparent undue inconvenience.

Stumble Inn Café, New Plymouth

58. This Commission noted that this venue has general measures. For the reasons set out above, the Commission considered whether the possibility of minors gaining access to the class 4 gambling is minimal and determined that it is not. The condition was properly imposed under section 70(2)(b) to minimise this possibility. The Commission determined that the condition would potentially reduce the possibility of access by minors to class 4 gambling, for the reason set out above.
59. The Commission considered that the condition was reasonable, given all of the circumstances of this venue, as it would reduce the possibility of access by minors to class 4 gambling. Any foreseeable detriment suffered as a result would not be disproportionate to this benefit. The Commission accepted that closing the secondary door may cause inconvenience but noted that there are other entrances to allow access into the venue.

Home Bar, Tauranga

60. This Commission noted that this venue has general measures. For the reasons set out above, the Commission considered whether the possibility of minors gaining access to the class 4 gambling is minimal and determined that it is not. The condition was properly imposed under section 70(2)(b) to minimise this possibility. The Commission determined that the condition would potentially reduce the possibility of access by minors to class 4 gambling, for the reason set out above.
61. The Commission considered that the condition was reasonable, given all of the circumstances of this venue, as it would reduce the possibility of access by minors to class 4 gambling. Any foreseeable detriment suffered as a result would not be disproportionate to this benefit. It was observed, on a number of occasions, that the door in question was clipped open, increasing the possible risk of access by minors. The Commission noted that the external door to this venue is located near to the main entrance.

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke.

Imposition of condition on harm minimisation grounds

62. Under sections 70(2)(g) and 70(2)(i), the Secretary may add conditions relating to procedures to encourage responsible gambling at the venue which the Secretary considers will promote or ensure compliance with the Act.
63. In decision GC06/06, the Commission decided that it would consider the problem gambling evidence of Mr Stansfield and Dr Townsend, as it was relevant in the context of this appeal pursuant to sections 70(2)(g) and 70(2)(i). Having determined that the condition could be appropriately imposed under section 70(2)(b) for all 11 venues, it was unnecessary for the Commission to determine whether it could also be imposed pursuant to sections 70(2)(g) and 70(2)(i).

Form of condition

64. Lion submitted that the condition was uncertain because it imposed controls on entrances into "the gaming machine area" when this term is not statutorily defined. It further submitted that to read "gaming machine area" to be the same as "gambling area" would require all entrances into the venue to be closed and locked.
65. The Commission does not consider that there is any real uncertainty surrounding the definition of "the gaming machine area", the application of this term or its distinction from the statutorily defined "gambling area". "Gaming machine area" is not a term of art, but describes the distinct physical space at each of the 11 venues where gaming machines are located.
66. The Commission does not agree with Lion's submission that the Secretary unlawfully fettered his discretion under section 70(2)(b) by determining that supervision of access to gaming machines is effective only if bar staff have a physical sight line between the bar and where the gaming machines are located.
67. In any event, the Commission has considered each venue separately on a *de novo* basis and has concluded that the condition imposed by the Secretary is appropriate in all venues.

Decision of Division

68. For the reasons already provided, the Division unanimously declines the appeal for all venues.

A large, stylized handwritten signature in black ink, consisting of a large loop and a long horizontal stroke.

69. The Commission makes no order as to costs.

**GAMBLING
COMMISSION**

Peter Chin
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

30 June 2006