

IN THE MATTER of the Gambling Act 2003

AND on an application by **DUNEDIN CASINOS LIMITED** and **DUNEDIN CASINOS MANAGEMENT LIMITED** for approval of a new floor plan and for approval of construction and design changes

BEFORE THE GAMBLING COMMISSION

Members: G L Reeves (Chief Gambling Commissioner)
P J Stanley
L Hansen

Date of Application: 14 January 2011

Date of Decision: 18 February 2011, 15 April 2011, 13 May 2011, 17 June 2011

Date of Notification of Decision: 1st July 2011

**DECISION ON AN
APPLICATION BY DUNEDIN CASINOS LIMITED AND
DUNEDIN CASINOS MANAGEMENT LIMITED
FOR APPROVAL OF A NEW FLOOR PLAN AND FOR APPROVAL OF
CONSTRUCTION AND DESIGN CHANGES**

Introduction

1. Dunedin Casinos Limited (“DCL”) and Dunedin Casinos Management Limited (“DCML”) (together the “Applicants”) applied to the Commission for approval:
 - (a) of a new floor plan, under condition 12 of DCML’s operator’s licence, allowing them to place eight gaming machines onto the casino’s smoking balcony and two gaming machines at the entrance to the smoking balcony;
 - (b) for construction and design changes, under conditions 6 and 7 of DCL’s venue licence, to remove two glass panels that form the air lock doorway leading into the casino’s smoking area.

2. The Commission first considered this matter at its February 2011 meeting, but adjourned the application to seek additional information on whether the gambling activity proposed for the smoking balcony would be visible from outside the casino. The Commission also sought information on the proposal from Public Health South (“PHS”), which administers the Smoke-free Environments Act 1990 (the “Smoke-free Act”) in Dunedin.

3. In response, the Applicants submitted that they would install aluminium louvres in part of the smoking balcony windows in order to prevent gambling activity from being visible from the street and public areas outside the casino. The Commission adjourned the application at its April meeting, to obtain further information on the proposed louvres. At that time the Commission also sought submissions on the application from the Problem Gambling Foundation (“PGF”), the Gambling Helpline, the Salvation Army (“SA”) and the Ministry of Health. The Commission received submissions from PGF and SA.
4. At its May 2011 meeting the Commission further considered this matter, but before reaching a decision, adjourned the application and asked the Applicants to file an amended floor plan depicting where they would position the gaming machines on the smoking balcony if the Commission was to determine that gambling activity could not be visible from anywhere outside the casino. The Applicants filed an amended floor plan and additional submissions, which the Commission considered at its June 2011 meeting.

Licence conditions

5. The relevant licence conditions are as follows:

DCML's operator's licence

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 Surveillance Standard. The Executive Director and a single Gambling Commissioner may approve the new floor plans if they are satisfied that 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.

DCL's venue licence

6. The Licence Holder must obtain the approval of the Commission prior to:
 - (a) construction or design changes to Level 1 of the Casino Venue, including the Gambling Area;
 - (b) the construction or relocation outside the Gambling Area and within the Casino Venue of bank facilities available to the public excluding ATMs, EFTPOS and like devices;
 - (c) the addition or alteration of signage relating to the casino business on the exterior of the Casino Venue.

The process by which the Licence Holder may obtain approval for construction or design changes to Level 1 of the Casino Venue, (paragraph (a) above) is set out in condition 7. The Commission will determine any application for approval under 6(b) and (c).

7. The Licence Holder must notify the Executive Director of any proposed changes to the construction or design of Level 1 of the Casino Venue. Notification must be accompanied by relevant drawings and an assessment of any impacts the alterations may have on:

- (a) the integrity and fairness of games;
- (b) the effectiveness of security and surveillance;
- (c) harm prevention, harm minimisation and responsible gambling;
- (d) potential access to the Gambling Area by persons under 20 years of age; and
- (e) compliance by any person with the Act, including section 11 of the Act.

The Executive Director may approve the proposed changes to the construction or design if he or she is satisfied that there are no adverse impacts in relation to the matters specified in (a)-(e) above. If the Executive Director is not satisfied, he or she will refer the proposal to the Commission for determination.

8. The Licence Holder shall ensure that:

- (a) gambling activity is not visible from the street or other public areas outside the Casino Venue; ...

Applicants' initial submissions

6. The Applicants submitted, in summary, that:

- (a) They had previously obtained Commission approval to construct a smoking balcony at the Dunedin casino. The approval provided that gambling activities were prohibited from the time the smoking area was commissioned for use as an "open area" within the meaning of the Smoke-free Act. This prohibition was suggested by the Secretary only to ensure consistency with the Commission's earlier decisions relating to smoking areas at the Auckland and Christchurch casinos.
- (b) Seven Class 4 venues are currently permitted to operate gaming machines in their smoking areas. Dunedin casino should also be permitted to operate gaming machines within its smoking area.
- (c) In decision GC31/10, the Commission concluded (at least in circumstances specific to the Kilbirnie Tavern) that it was unreasonable for the Secretary to impose a licence condition that would prevent patrons from gambling in the open areas of the venue.
- (d) They are already tightly constrained with venue size, so being able to utilise the smoking balcony for gambling will improve the attractiveness of Dunedin casino as a destination venue.
- (e) They have considered this application against the purposes of the Act and have not identified any issues of regulatory concern.

- (f) There will be no increase in gambling opportunities as they will continue to offer 12 gaming tables and 180 EGMs.
- (g) The new floor plan will relocate the 10 gaming machines that were placed in the Grand Bar in 2010, with eight being positioned inside the smoking area and two immediately outside it.
- (h) They intend to remove two glass panels that form the air lock doorway leading to the smoking area. This air lock space is not required so the panels will be removed to open up more space on the casino floor.
- (i) This change has been considered against condition 7 of DCL's venue licence and no issues of concern have been identified.

Secretary's initial submissions

7. The Secretary submitted, in summary, that:

- (a) The Commission's approval to construct the smoking balcony in 2004 was on the basis that "gambling activities are prohibited on the smoking balcony from the time it is commissioned for use as an "open area" within the meaning of the Smoke-free Environments Act 1990 until such time as it ceases to be used for this purpose." The Applicants now want the Commission to reconsider its earlier decision.
- (b) The Commission is aware of the submissions and evidence he presented in the appeals relating to the placement of gaming machines within Class 4 venues. That information is also relevant to this application.
- (c) He notes the Commission's observation in decision GC27/10 (an application by Christchurch casino to allow a new bar on the roof of that casino) that:

The provision of smoking facilities at an even greater distance than the current area on level 4 would not seem to create a greater risk of problem gambling. If anything, the creation of new, more pleasant but slightly more distant smoking facilities would be expected to encourage proper breaks in play.

- (d) He has no regulatory concerns regarding the proposal to remove two glass panels that make an air-lock space at the entrance to the smoking balcony.

Applicants' submissions on visibility

8. In response to a request from the Commission for additional information on the visibility of gambling activity from outside the casino, they submitted, in summary, as follows:

- (a) The smoking area will always comply with the Smoke-free Act. Specifically:
- (i) The removal of the air-lock has no impact on the smoking area as it does not increase or reduce the amount of open area or available floor space.
 - (ii) The maximum amount of floor space that can be available for smokers has been calculated at 7.56m². The total floor space of the smoking area is 13.86m². This means that the floor space must be reduced by 6.3m² to ensure that the open area does not exceed 7.56m². This is achieved by installing eight gaming machines on the balcony, together with the existing planter boxes/benches.
 - (iii) The available floor space will be further reduced once louvres are installed, so it will reposition its planter boxes in such a way that access to parts of the floor is eliminated.
- (b) They will install louvres to prevent visibility from the street and other public areas. These louvres will be permanently fixed and unable to be adjusted (ie, they cannot be closed).
- (c) The proposed louvre installation will prevent visibility from all street areas and as far up as the fifth floor of the adjacent buildings (which all have about eight floors).
- (d) The Secretary has stated that some of the gaming machines installed in the smoking area will be visible from the street – the installation of the angled louvres resolves this issue.
- (e) The Secretary argues that visibility of gambling activity from the street and other public areas outside the casino is a harm minimisation and prevention issue. This is ironic when it was his Department that proposed the current wording of condition 8(a). Adding to the irony is the fact that the Class 4 sector (comprising around 18,000 gaming machines) has no such visibility restriction.
- (f) The proposition that adjacent buildings should be considered public areas suggests that the buildings are readily accessible. They are not, because these buildings are private property. If it is the Secretary's intention to prevent visibility from private areas outside the casino, then he should apply to the Commission to amend condition 8(a). But their application must be considered within the boundaries of the current licence condition.



Secretary's submissions on visibility

9. In response to a request from the Commission for additional information on the visibility of gambling activity from outside the casino, the Secretary submitted, in summary, as follows:
- (a) Licence condition 8(a) states that the "Licence Holder shall ensure that gambling activity is not visible from the street or other public areas outside the Casino venue." It would be impossible to position gaming machines on the smoking balcony so that they would not be visible from the street or other public areas.
 - (b) He understands that the Applicants may be considering the use of louvres to negate visibility, but he does not know if this would be sufficient to limit visibility from surrounding buildings.
 - (c) The Applicants may argue that surrounding buildings are not public areas. Although the licence condition specifically restricts visibility from "public areas", the distinction between "public" and "private" is arbitrary. People who are located in private areas of adjacent buildings should be afforded the same consideration with regard to harm minimisation and prevention as those people who are located in public areas.

Submissions by Public Health South

10. In response to a request from the Commission to comment on the Applicants' proposal, PHS submitted, in summary, as follows:
- (a) Due to the nature of the openings on the smoking balcony, the total floor area of the balcony must be less than or equal to the total open area.
 - (b) On the basis of the information it has, its view is that the smoking balcony at the Dunedin casino will not be substantially enclosed and will therefore be an open area for the purposes of the Smoke-free Act.

PGF's submissions

11. PGF submitted, in summary, as follows:
- (a) There is a clear and well documented relationship between smoking and problem gambling. In the research report "Cigarette smoking is associated with increased severity with gambling problems in treatment seeking gamblers" the authors conclude that:

... daily smokers demonstrated more severe gambling, family/social and psychiatric problems. Compared to non daily smokers the daily smokers gambled on more days and spent more money gambling. They also "craved" gambling more and had lower perceived control over their gambling.

This has been confirmed by other research.

- (b) There is a strong relationship between smoking and gambling and in particular, gambling on EGMs. Given this, it is no surprise that the casino would seek to exploit the additional revenue opportunity this application would create, if approved.
- (c) It has noted substantial benefits from the introduction of bans on EGM gambling in smoking areas. The bans allow smokers a "time out" in which they can reflect on their gambling activity. Smoking therefore creates a break in play for a particularly vulnerable group and allows them an opportunity to recognise that they have gambled a greater amount, and for a longer period, than they intended and/or than they could afford.
- (d) Therefore a clear separation of gambling from smoking is very important as a mechanism to reduce gambling harm.
- (e) Gambling machines should not be visible nor audible outside the casino.
- (f) The sights and sounds of gambling machines in operation can trigger new or additional gambling, or relapses into problematic gambling behaviour. Therefore the only approach is for no sight or sound from gambling operations from public areas.
- (g) The Applicants have argued that high-rise buildings do not constitute public areas as they are privately owned and public access is restricted. However, in the context of the Act, these buildings are public in the sense that they encompass people who have no connection with the casino, are outside the casino environment, and have not chosen to enter the gambling environment or to be subjected or exposed to it.
- (h) Having entered this space for a purpose totally distinct from gambling, people can be encouraged to take part in gambling activities or suffer a relapse into resuming problem gambling that they did not intend to participate in.
- (i) It is crucial that gambling areas are not visible at all from outside the casino at any time that it is possible to enter and use the casino.

SA's submissions

12. SA submitted, in summary, as follows:

- (a) The proposal is contrary to controlling the growth of gambling, preventing and minimising harm and ensuring responsible gambling.
- (b) The addition of gaming machines in smoking areas can increase casino gambling opportunities, even when machine numbers remain within approved limits, if additional machines are being installed and not just relocated. Research shows that for every new EGM there will be 0.8 extra gamblers.
- (c) Enlarging gambling areas can provide room for further gambling products to be installed in the future.
- (d) The Applicants believe the smoking area will improve the attractiveness of Dunedin casino. This is an enticement to attract more custom and therefore will increase gambling opportunities through increased patronage.
- (e) Providing an opportunity to break from play, whether it is for smoking or anything else, is an opportunity for host responsibility staff to prevent and minimise harm. If machines are placed in smoking areas then gamblers lose an opportunity for a break in play, and could further expose smokers to problem gambling risk as they will be close to machines when they do take a break from machines in the main casino area. This provides an environment that can increase the risk of problem gambling.
- (f) This application has arisen because of decision GC31/10, which concluded that it was unreasonable for the Secretary to impose a licence condition that would prevent patrons in a class 4 venue from gambling in an 'open area' where smoking is permitted. The Commission believes the proposed licence condition would have no materially beneficial effect on problem gambling and that there is little evidence to support the assertion that separating smoking and gambling would reduce the risk of harm caused by problem gambling. Until there is research conducted on this in New Zealand, the answer to this question is not known. However, this lack of evidence does not take away its responsibility to do all that is possible to prevent and minimise harm in the meantime. The community has a responsibility to protect the most vulnerable people from harm. Gaming machine players are vulnerable to gambling harm, as most of its clients cite pokies as their problem gambling mode.



- (g) The Applicants believe it should be permitted to operate EGMs in their smoking area, particularly in light of the fact that many class 4 venues operate EGMs in their smoking areas. It understands that only seven class 4 venues are currently permitted to operate EGMs in smoking areas, out of approximately 18,000 machines.
- (h) It is concerned there will not be enough space for patrons and staff to move in between the machines for safety and security measures.
- (i) The licence conditions require that gambling activity is not to be visible by the public from outside the casino. This should be adhered to for the smoking areas as well. From working with problem gamblers and those at risk, viewing gambling opportunities can increase the potential of problem gambling, particularly for vulnerable people. Also many migrants and international and New Zealand students live in city apartments, and they can be particularly vulnerable to problem gambling due to loneliness and isolation.

Applicants' submissions in response

13. In response to the Commission's request for additional information on the proposed louvres, and in response to the submissions by PGF and SA, the Applicants submitted, in reply, as follows:
- (a) The Commission has already addressed PGF's submission regarding the relationship between smoking and gambling, and determined that the imposition of a licence condition preventing smoking and gaming machine play would interfere with two lawful activities.
 - (b) Casinos have responsible service of gambling and responsible service of alcohol training programmes in place. This ensures that staff are equipped to identify patrons whose activities are causing harm to themselves or others.
 - (c) Enlarging the Gambling Area does not increase opportunities for casino gambling. The Commission has considered this on numerous occasions.
 - (d) There is enough space on the smoking balcony to satisfy fire standards.
 - (e) In relation to visibility, licence condition 8 provides that gambling activity cannot be visible from the street or other public areas outside the casino. Adjacent office blocks are not public areas as they are operated by private organisations. Access cannot be obtained without permission.

- (f) The proposed louvres are “Z” shaped aluminium blades which provide 100% weatherproof protection and allow for continuous airflow. They will extend as high as the cross-bar in the window, which is approximately halfway up. This will comfortably prevent visibility from the street and from as high up as four or five floors of the adjacent buildings.
- (g) Should the Commission determine that the adjacent buildings are public areas, they will consider extending the height of the louvres, and will reassess the impact this will have on available floor space in terms of the “open area” calculation.

Applicants’ floor plan submissions

14. In response to the Commission’s request for a possible new floor plan, the Applicants submitted, in summary, as follows:
- (a) They have now decided to install louvres over the entire window space, not just up to the cross-bar. This will ensure that no-one will be able to see gambling activity from anywhere outside of the casino.
 - (b) There is no requirement for them to do this, as compliance with licence condition 8 can be achieved without doing so, but they are installing the louvres in order to move ahead and without prejudice to their ability to argue this issue in the future.
 - (c) They have had discussions with PHS regarding louvres being installed over the entire window space. PHS has approved this.
 - (d) They seek approval for a new floor plan with eight gaming machines on the smoking balcony, with the two machines that were to be placed just outside the smoking balcony being relocated to elsewhere on the floor.
 - (e) They no longer seek Commission approval to remove the air-lock from the smoking balcony, as they now want to retain this. Removing the air-lock could impact on non-smokers if there is only one door between the smoking and non-smoking area.

Analysis

15. Although this matter was framed as an application for approval of a new floor plan, and for construction and design changes, it was, in substance, an application for approval to allow patrons to smoke while playing gaming machines on the smoking balcony of the Dunedin casino. The application followed an earlier Commission decision, GC31/10, in which the Commission considered whether patrons should be permitted to smoke while playing gaming machines in a dedicated area of a Class 4 venue in Wellington, the



Kilbirnie Tavern. The Applicants submitted, that if it is acceptable for the Kilbirnie Tavern's patrons to smoke while playing gaming machines, it should be acceptable for their patrons to do the same.

16. At its May 2011 meeting, the Commission considered and approved a similar application by the Auckland casino (see decision GC15/11). Like the Auckland application, the present application raised two issues for consideration, as follows:
- (a) whether the application should be declined for reasons relating to harm caused by problem gambling; or
 - (b) whether what is proposed is acceptable, having regard to concerns about visibility of gambling activity outside the casino.

Smoking and gambling at the Dunedin casino

17. In decision GC15/11, the Commission determined that smoking and gambling may be permitted together at casinos in New Zealand, but only if the two activities are combined in a manner that (a) is consistent with the Gambling Act and its purpose; and (b) will not exacerbate the potential for harm.
18. The Commission was satisfied that the Applicants' proposal is consistent with the Act and would not increase the potential for harm, largely for the reasons it approved SKYCITY Auckland's recent application, namely:
- (a) As discussed in decision GC15/11, the current research on smoking and problem gambling does not establish a clear benefit for the minimisation of problem gambling harm from banning smoking while gambling. Although there is evidence of a correlation between smoking and problem gambling, the evidence does not establish that smoking bans would reduce incidences of problem gambling (as opposed to reducing gambling in general).
 - (b) Dunedin casino's host responsibility obligations are sufficiently onerous that, if a patron exhibits signs of problem gambling while smoking and playing gaming machines, the Commission would expect that person to be identified and the appropriate intervention to occur.
 - (c) The Commission can exercise considerable control over casinos by imposing, for example, additional host responsibility obligations, or additional licence condition requirements. The abovementioned correlation means that the Applicants should consider their harm minimisation obligations carefully and address the issue in its

Host Responsibility Programme, but it does not lead the Commission to forbid gambling in open areas.

- (d) Although the smoking balcony has been used by patrons as a respite area from gambling, patrons can still obtain respite by stopping gambling to have a drink or a meal. Patrons may also be able to smoke on the smoking balcony without playing a gaming machine. The Commission expects the applicants to monitor respite areas carefully and address the adequacy of its respite areas in its review of its host responsibility programme.

Visibility of gambling

19. In their initial submissions, the Applicants stated that gambling activity would not be visible from outside the casino but when probed on this by the Commission, amended their position to state that gambling activity would not be visible from the street or other public areas outside the casino, in compliance with condition 8(a). Gambling activity could, therefore, have been visible from non-public areas outside the casino.
20. In decision GC15/11, the Commission concluded that gambling activity should not be at all visible from outside a casino, noting that this restriction has been in place since casinos opened in New Zealand. The Applicants did not raise anything in their submissions on this application to make the Commission deviate from this conclusion other than to point to the limits of the current condition 8(a)
21. In order to prevent activity being visible from anywhere outside the casino, the Applicants stated that they would install aluminium louvres across the entirety of both windows in the smoking balcony. On the basis that the louvres would prevent visibility, the Commission approved their installation under conditions 6 and 7 of DCL's venue licence.
22. PHS has informed the Commission that the Applicants' proposal appears to be compliant with the requirements of the Smoke-free Act, but it is of course incumbent upon the Applicants to ensure ongoing compliance with that Act, and licence condition 8(a).

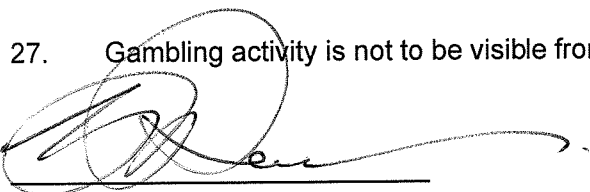
Other

23. As noted in decision GC15/11, the current wording of condition 8(a) has created confusion surrounding whether gambling activity can be visible from outside casinos in New Zealand. The Commission intends to initiate an amendment to licence condition 8(a) for all casinos in the country to ensure that the condition clearly prevents gambling activity from being visible from outside a casino. The Applicants and other affected parties will be consulted on the proposed amendment in the usual manner.

24. The PGF and SA made submissions in relation to the audibility of gaming machines from the streets neighbouring the casino, and the effect this might have on problem gamblers, or potential problem gamblers. This is an issue that the Commission has not previously considered. The Commission intends to propose a restriction on audibility as well as visibility in its proposed amendment so that it receives the benefit of submissions on the issue.
25. The Applicants withdrew their application for approval to remove the airlock from the smoking balcony. Accordingly, the Commission did not consider that matter.

Decision

26. For the reasons outlined above, the Commission approved:
- (a) a new floor plan (**attached**), under condition 12 of DCML's operator's licence; and
 - (b) the installation of aluminium louvres in smoking balcony windows at the Dunedin casino, under conditions 6 and 7 of DCL's venue licence.
27. Gambling activity is not to be visible from outside the casino.



Graeme Reeves
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

1st
July 2011



**GAMBLING
MISSION**

Dunedin Casino
 Gaming Floor Plan
 180 Gaming Machines
 Table Games Floor Plan
 Scale 1:1.3

