



Mr Brett Christopher Walker Licensee The Colombian Hotel [REDACTED]	Ms Jane Lin Executive Director, Regulatory Operations & Enforcement  By email to: [REDACTED]
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Our ref: DOC24/083872

15 April 2024

Dear Mr Walker

<b>Applicant</b>	Mr Brett Christopher Walker
<b>Application for</b>	Review of a decision made under section 44A of the <i>Gaming Machines Act 2001</i> by a delegate of the Secretary of the NSW Department of Enterprise, Investment and Trade
<b>Licence name</b>	The Colombian Hotel
<b>Premises</b>	117-125 Oxford St, DARLINGHURST NSW 2010
<b>Date of reviewable decision</b>	18 April 2023
<b>Legislation</b>	Section 36A of the <i>Gaming and Liquor Administration Act 2007</i>

### Application for review of a delegated decision – The Colombian Hotel, Darlinghurst

#### Our decision

We have decided to **confirm** the delegate's decision.

#### The delegate's decision

On 18 April 2023, a delegate of the Secretary of the NSW Department of Enterprise, Investment and Trade issued a notice under section 44A of the *Gaming Machines Act 2001* (Act), directing you to move or permanently screen the gaming machines at The Colombian Hotel so that they:

- are not visible to, or attract the attention of, any person outside the hotel at any time, including from within an adjoining licensed premises
- are not located in any room or other location that shares an interconnecting door or other thoroughfare with another venue that is frequented by members of the public, including any adjoining licensed premises.

#### Summary of the delegates findings

##### Gaming machines located in a manner designed to attract attention:

- The functional change to the opaque interconnecting door so that it only opens when a button is manually pushed is a positive step in mitigating the delegate's concerns.
- In the delegate's opinion the existence of an accessible door between the two gaming rooms serves the sole purpose of attracting persons outside the hotel to the adjacent hotel and facilitating their movement between the two adjoining gaming rooms, and
- The provision of access directly between licensed venues circumvents the legislated cap of 30 on the number of gaming rooms in a hotel gaming area.

#### Public interest considerations:

- patrons are effectively being provided with access to 55 gaming machines, thereby circumventing the legislated hotel maximum of 30
- facilitating the free flow of patrons directly between adjoining venues increases the risk of problem gambling and is inconsistent with the harm minimisation objectives of the legislation
- the hotel operates with a reduced mandatory shutdown period which increases the risk of gaming-related harm to problem gamblers, particularly in the context of an extended gaming room
- requiring patrons to enter the adjoining premises via its street entrance may break the cycle of harmful gaming for a problem gambler.

#### Identification of harm:

- the delegate has a role in identifying and protecting the community from potential harms as well as responding to harms that have already occurred.

#### **Application for review**

On 16 May 2023, you sought a review of the delegate's decision on the grounds that:

- part one of the notice sufficiently restricts the licensee from operating the connecting door
- part two of the notice goes beyond the scope of section 44A of the Act, and its intention to prevent gaming machines attracting the attention of members of the public outside the hotel
- the venue would have to undertake a particularly onerous and unnecessary renovation of the gaming room to comply with part two of the notice.

Your review application seeks the decision be amended to remove part two of the notice.

#### **Submissions and consultation**

On 11 July 2023, we invited further submissions from yourself and the delegate in response to the application for review.

#### Delegate's response

In summary:

- Contrary to your assertion, the order does not require construction of a wall, renovation of the gaming room, or a return of the premises to its original condition (prior to the interconnecting door being constructed)
- a solid roller shutter currently exists between the two gaming rooms which has been permanently closed since the notice was issued, satisfying the second requirement of the notice
- it is against the public interest to set a precedent that the creation of extended gaming rooms by way of an interconnecting door is allowable under the Act
- an accessible interconnecting door between two gaming rooms inherently increases the risk of problem gambling
- the second requirement of the notice is essential in ensuring the public interest concerns can be fully addressed as this part clarifies that there is to be no direct access for patrons whatsoever between the two gaming rooms.

#### Your response

In summary:

- you concede that gaming machines were visible from the adjoining hotel when the interconnecting sliding glass door opened to permit patron migration

- this problem could be resolved with the installation of a second sliding opaque glass door which would only open after the first sliding door is closed, creating an airlock of sorts, and a permanent visual and sonic barrier between the two rooms at any point in time, even in circumstances where patrons are traversing the space between the two venues
- the delegate has conceded in her submission that the second requirement of the notice is designed to address the concerns of patron movement between the two adjoining rooms by permanently removing accessibility, which is an improper purpose, exceeding the scope of the power to issue the direction under section 44A of the Act
- the adjoining gaming rooms are entirely independent of each other. Each gaming room has its own staff and its own cashiers and TITO systems
- based on all of the foregoing submissions and the fact that the operator is agreeable to permanently screen the gaming machines from the adjoining gaming room, the request to remove the second requirement of the notice should be approved.

### **Our findings**

We note that you are complying with the notice by keeping the roller door between the two hotels closed. We therefore do not accept that compliance requires the construction of a new wall or the reconfiguration of the gaming room.

You submit that the second part of the Written Direction is outside the scope of Section 44A of the Act in that it represents an unreasonable overreach of the Secretary's power properly exercised pursuant to s44A. You further submit that it is concerned not with the movement or screening of gaming machines, as required by the provision, but rather the restriction of access between The Colombian Hotel and the Gaslight Inn Hotel.

We are inclined to the view that the second part of the notice clarifies the first part by stipulating the manner in which the gaming machines in the adjoining venue are to be screened from patrons in your venue, and specifically by ensuring gaming machines are not in a 'location that shares an interconnecting door or other thoroughfare with another venue...' In that regard the challenged portion of the notice seems to us to be within the Secretary's power.

You also state that the notice appears to be concerned to restrict access of patrons between venues rather than the screening of machines. Without considering the delegate's objective, the effect of the notice is clearly not to restrict access between the venues because a patron is quite free to leave your venue and enter the Gaslight Inn Hotel, just not through one or more sliding doors between the venues.

We note your comments on the interpretation of the 'public interest' in the context of s.44A and that 'public interest considerations must be inextricably linked to the location of the gaming machines'.

That is a position the Authority does not accept. The Secretary is bound to act in accordance with the objects of the Gaming Machines Act as set out in s 3 and your attention is drawn particularly to subsection (3).

We agree with the delegate's conclusion that the interconnected gaming rooms give the appearance of one large gaming room with 55 gaming machines, whereas the statutory limit in hotels is 30 machines. This presents an increased risk of gaming-related harm as patrons can access 55 gaming machines across the two rooms, almost double the number permitted for a single hotel. In our view the alleged lack of interoperability between the venues does not diminish the potential for harm.

The decision by the delegate to issue both parts of the notice under s 44A was appropriate course of action to give effect to her harm minimisation responsibilities under the Act.

## The material we considered

### Material before the Delegate:

- liquor licence for The Colombian Hotel (LIQH400104448)
- investigation report dated 17 August 2022
- notice to show cause and correspondence dated 9 March 2023
- file note regarding inspection of internal access dated 9 March 2023
- six photos of the gaming area
- submission from LAS Lawyers & Consultants on behalf of the licensee dated 29 March 2023
- supporting analysis for the decision
- notice under section 44A of the Act dated 18 April 2023
- The Colombian Hotel monthly gaming data
- updated liquor licence for The Colombian Hotel (LIQH400104448) dated 20 April 2023
- gaming plan of management dated March 2023

### Review application and submissions:

- review application dated 16 May 2023
- submission from the delegate dated 26 July 2023
- submission from LAS Lawyers & Consultants on behalf of the licensee dated 16 August 2023.

This decision will be published on the [Liquor & Gaming NSW website](#) in accordance with section 36C of the *Gaming and Liquor Administration Act 2007*.

## If you have any questions

Please contact the Office of ILGA at [office@ilga.nsw.gov.au](mailto:office@ilga.nsw.gov.au) if you have any questions.

Yours sincerely



Caroline Lamb

**Chairperson**

For and on behalf of the **Independent Liquor and Gaming Authority**