

ASSESSMENT OF NORTHERN BEACHES COUNCIL GAMBLING AND POKER MACHINE HARM MANAGEMENT POLICY AND PLAN

November 2018

This is an assessment by the Alliance for Gambling Reform of the recent adoption of a policy addressing gambling harm by Northern Beaches. We have analysed the policy and supporting document and make suggestions as to stronger action which might be considered by another council, and where there are gaps in coverage of the policy and/or plan.

We consider this a strong policy, especially given the environment in NSW in terms of gambling industry influence. We were heartened to see that Northern Beaches council received double the number of submissions in support of the policy than against it, despite the concerted efforts of the 39 clubs and other hotels in the LGA to stop the policy being adopted.

ACTIONS TAKEN BY NORTHERN BEACHES COUNCIL

On September 25th 2018, Northern Beaches council modified and then adopted a Policy and Plan to address Gambling and Poker Machine Harm in the LGA. This makes the Northern Beaches council only the second in NSW to adopt such a policy, in contrast to nearly 50% of Victorian councils.

Adopting a policy and plan of any sort by a council in NSW is a significant action, which is a statement of community leadership and a response to the gambling industry which the industry is unused to receiving.

VISION STATEMENT

The principles set out in the Policy statement are excellent.

CHANGES: potentially in the final Principle point, where gaming operators such as clubs and hotels are specified, everyone body else, including gambling counselling and community service organisations are lumped together. Specifying counselling and service providers as stakeholders in the same way that clubs and hotels are, indicates the view of the Council that they are equally important, and flags the kinds of organisations which staff should ensure are included in any stakeholder engagement.

ADVOCACY ROLE

There is a clear recognition that councils have a role to play in lobbying state governments around actions which impact on their communities.

The Council also intends to lobby the LGNSW Association to also lobby state government, in a manner which was discussed at the 2018 LGNSW conference, based in part on proposals from Liverpool and Byron Councils.

CHANGES: the items Council intends to lobby about are very broad: "minimize EGM and other gambling harm". Lobbying aims could perhaps include specifics. As the track changes document shows, the original report suggested lobbying the State government to adopt all the recommendations of the Productivity Commission (2010) and the Upper House Select Committee (2014). Another Council seeking stronger advocacy guidelines could adopt these recommendations as a basis for lobbying.

LOCAL IMPACT ASSESSMENTS

Northern Beaches policy requires the Council to consider each LIA, including potential harms it may cause even if it is a Class 1 LIA.

One of the weakest parts of the entire regulatory system in NSW is the Local Impact Assessment process. Since the legislative changes in March 2018, many venues are no longer required to submit an LIA to move EGMs into a venue. Most of the LIAs will remain Class 1 applications, which require the operator to simply note any benefits. Class 2 applications require at least a semblance of balance, as the applicant must address **net** benefit, meaning harms must be referred to. However, the guidelines for assessment now make it clear that a simple dollar figure for grants or donations will be sufficient to be defined as a community benefit (that is, there is no need to evaluate whether the amount is needed, used for purpose, or whether the purpose provides a benefit). We have seen LIAs where a hotel's expenditure on replacing its own carpet 'for safety purposes' was claimed as a community benefit.

The legislation regarding harm minimization is scanty. For instance, allowing a patron to self-exclude is mandatory. Most venues now belong to ClubSafe or BetSafe, both offering a mechanism by which a patron can self-exclude from multiple venues. Many venues claim this multi-venue exclusion as their sole action to address harm above legislative requirements and assert that this alone, along with a certain amount of money, address any potential harm from the EGMs they seek to install.

CHANGES: There is no clear process to ensure that the GM/CEO and all councillors are informed when an LIA notification is received by Council. This means the matter might be dealt with by staff while councillors, and through them the community, are completely unaware that an application has been lodged. ILGA may send the notification to a staff member who has no idea of how to deal with the notification or prepare a submission. Good processes including nominating a senior council staffer to be responsible for submissions, and requiring that all councillors receive a copy of the ILGA or applicant's notification, are essential.

Council should lobby the ILGA or State government to ensure that any council is notified of any movement of EGMs, even if the venue is not required to lodge an LIA.

Some Victorian councils have a policy that states the circumstances under which they might support an LIA, while others have a policy which states that the Council will oppose any application under any circumstances. NSW Councils should have a policy on their response to an LIA.

COMMUNITY EDUCATION

Northern Beaches Council is committed to providing information about gambling harm and avenues for help. The plan calls for the council website to be the main method of providing information, in collaboration with "clubs, hotels, and other relevant bodies/stakeholders".

CHANGES: Given that the information council is providing is related to gambling harm and help for problems, the main stakeholders listed as collaborators should not be the venues which make profits from gambling, but the gambling counselling services located on the Northern Beaches, or in the community of a council which adopts a similar policy.

Web-based information can be very powerful, as some Victorian councils demonstrate. However, a stronger policy would commit a council to additionally holding community information events, or including information about local services in the variety of ways that are listed in the discussion point that accompanies the Action statement (brochures at libraries, community centres and customer service outlets, as well as active promotion through presentations and seminars).

A Council could sponsor an annual gambling harm forum, or ensure that each of the interagencies that it supports (homelessness, DV, multicultural, health etc) has a gambling taskforce subcommittee.

(search for gambling on the Whittlesea Council website to see what an active council does).

CLUBGRANTS

Council staff will be the representatives on the ClubGrant committee and will seek a fair and equitable distribution of funds.

The Alliance considers the NSW ClubGrants scheme to be fundamentally non-transparent and unsound. There is no legislative requirement for clubs to list the grants they give in any LGA. They only need to demonstrate to Liquor & Gaming that they reach a modest threshold of total grants before they are eligible for a tax discount. They are not obliged to report the details of category 2 grants to Liquor & Gaming at all. Anecdotally, we are aware that NCOSS representatives on ClubGrant committees in NSW are ignored by club representatives when grant decisions are made. Clubs are able to make grants to themselves but use the (unverifiable) total amount of their grants as a defence against accusations that poker machine losses harm communities. Some individual grant amounts are visibly small (\$50) but allow clubs to appear to be good community members by saying that they gave a (amount unspecified) grant to a small organisation.

CHANGES: Council should only consider supporting ClubGrants schemes in their LGA if there is a transparent process in place where all applications for club grants in the LGA are listed, and all successful grants (including details of recipients and amounts) in the LGA are also listed, on the Council website, for category 1 and category 2 ClubGrants. ClubsNSW has established an on-line system for applications, so obtaining the information should be simple.

Council should also demand that there be evaluations of the effectiveness of the grants and a demonstration that they are of benefit to the community. Council should have a plan to follow, including withdrawing support, if transparency or evaluation process are not put into place, or demonstrate flaws in the system.

GAMBLING SPONSORSHIP BANS

Council will seek to ban gambling sponsorship “on its buildings and properties and in any form of sponsorship.”

This provision created some controversy as clubs claimed that meant a ban on junior sporting teams wearing jerseys with the name of the club sponsors (where the club also has EGMs) and there was great deal of loose talk about kicking junior sporting teams off council grounds. These claims were repeated in the Inner West, where a similar proposal was put up in August 2018.

CHANGE: Any sponsorship ban statement should be carefully worded so that it is clear that the ban would extend to the naming of sports fields or facilities (e.g. swimming pools or gyms or even libraries) by gambling companies and not to any individual sponsorship arrangements a club may enter into with a sports club that uses council facilities. We note that the renaming of Brookvale Oval as Lottoland Oval is deeply unpopular on the Northern Beaches.

LANDLORD POWERS

The draft plan included investigating whether the Council could include clauses in leases over council property to restrict EGMs. This action was removed from the plan during debate of the policy and plan.

Two issues arose. First, the clubs used this as their main argument against the entire policy, and put some effort into convincing smaller clubs that it would mean council staff would close their clubs overnight if the policy came in. This caused considerable distress to many board members and staff of small clubs and in the opinion of the Alliance was a particularly unscrupulous action.

Secondly, some councillors believe that the Gaming Machine Act, which makes the keeping of a licenced poker machine lawful, over-rules the Acts related to leases and tenancies.

It is clear from the law that the terms of an existing lease cannot be unilaterally changed. Any provision to limit EGMs by a landlord could only take effect in a new lease.

Port Stephens council is funding the construction of a Community Sports Club on council land at Medowie. The building will be leased to a club as a separate legal entity. The lease provisions however are very clear: no poker machines are allowed on the property. The Council decided not to ban all gambling, because that could include chocolate wheels and two-up on ANZAC day, which would clearly not be supported by the community. They are confident in their use of landlord powers in this matter.

CHANGES: Any clause seeking to investigate the use of landlord powers should be very clearly framed to indicate that it could only apply to new leases, or to renewed leases where the option to renew allowed significant changes.

As to the Gaming Machine Act provisions, the Alliance believes that a landlord has the right to place restrictions or bans on lawful activities in a lease. Many residential leases contain "No Pet" clauses, even though keeping dogs and cats is lawful in a residential dwelling. Some councils in the country have caveats across new developments, banning the keeping of dogs and/or cats, as a mechanism to protect wildlife. If necessary, the Alliance will obtain written learned opinion on the matter, but Council could do so for themselves.

This is about the only power a Council has to regulate the position of poker machines in the LGA. It cannot act on a development application and it cannot ban EGMs in an LEP (which Victorian councils can, to a certain extent, do). A Council which wishes to make a strong point should seriously consider this option.

PROMOTING GAMBLING FREE VENUES

Council staff considered that club venues were often suitable for functions based on accessibility, location, parking and catering and that a moratorium of use was "not considered to be an effective policy decision".

CHANGES: Other councils may consider a policy that is worded so that this action is aspirational i.e. "Council will endeavour to use gambling-free venues for events, whenever possible", which allows the flexibility needed when alternatives are not easily found, but marks a clear attitude which council may use as the basis of grants or joint ventures to create gambling-free venues.

REPORTING

The council staff, in response to submissions that council should lobby for more frequent, venue-based reporting, as is the case in Victoria, responded that NSW Treasury has a view that individual net profits of

clubs and hotels is ‘protected information’ under the TAA 1953 (Cth) Act. Victoria clearly does not agree. While a resolution to this is probably to be sought in the courts, that may beyond the role of council (but not perhaps beyond the role of the LGNSW Association) and the release of the data is certainly a state matter.

CHANGES: Councils could consider lobbying the State government to match the level of disclosure that occurs in Victoria, where no hotel or club has been adversely commercially affected by the monthly venue by venue reporting regime (see here for [Brimbank](#)).

Council could also undertake to provide regular analysis of the data that is released in NSW, to assist the local community in understanding changes in losses that occur over time.

RESEARCH

The Northern Beaches Council staff undertook significant research on this matter, and the report for the April 2018 council meeting contains much useful information for any council staff or councillors in NSW. Much of this is repeated in the Gambling and Poker Machine Harm Management Plan, which also includes, as appendixes, the recommendations of the 2010 Productivity Commission Report into Gambling and the 2014 NSW Select Committee on the Impact of Gambling.

CHANGES: Developing the expertise within council staff to understand gambling harm, the data released by the State government, and legislative or regulatory changes is a key action a Council can take to support its community. Clubs have all the resources of ClubsNSW, and hotels turn to AHA when they want to run a PR campaign in an area. Small community service organisations or gambling services don’t have those resources, and the terms of their funding often mean they are gagged from speaking out anyway. Council as a community leader can provide the information and make it available in a way that better informs local residents.

PROCESS

This process commenced on 28 November 2017, when a NOM was approved that staff report on strategies available to a council “to restrict the proliferation of poker machines in the Northern Beaches Local Government Area”.

That report was tabled and accepted on 17 April 2018, and council resolved to place it on public exhibition for 60 days, with submissions closing 1 July 2018. Council staff further held a meeting on 23 July 2018 with some representatives of local clubs and hotels, the AHA and ClubsNSW. No gambling counselling services, NCOSS or advocacy groups were invited to that meeting.

Changes to the Policy and Plan were made based on submissions received, and the meeting of 23 July, and the track changes version was submitted to council. The Policy was adopted without change, but point 7 in the executive summary of the Plan – related to the Council’s use of landlord powers – was deleted (and all parts of the Plan related to that point were also to be deleted). Councillors also amended the motion to acknowledge that clubs on the Northern Beaches had developed a strategy related to harm minimization.

The motion was supported 8 to 6, with the mayor having excused himself due to his non-pecuniary but significant relationships with local clubs.

Further enquiries about the Northern Beaches policy, or for details on Victorian council policies, can be made to Kate da Costa, AGR's NSW campaigner on kate@agr.org.au