

IN THE MATTER of the Gambling Act 2003

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

BEFORE THE GAMBLING COMMISSION

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

Date of Application: 22 April 2010

Date of Decision: 18 June 2010

Date of Notification
of Decision: 25 June 2010

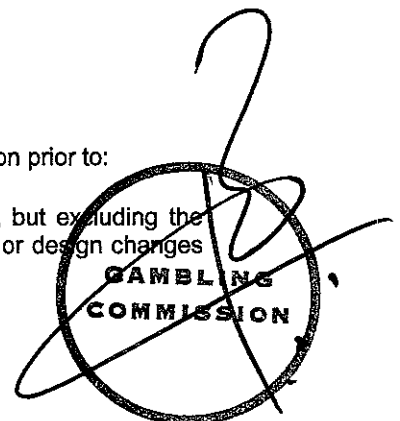
**DECISION ON AN APPLICATION BY OTAGO CASINOS LIMITED FOR APPROVAL
OF CONSTRUCTION AND DESIGN CHANGES, AND A NEW FLOOR PLAN**

Introduction

1. Otago Casinos Limited ("**OCL**") applied to the Commission for approval of:
 - (a) construction and design changes to the Lasseters Wharf Casino in Queenstown, under conditions 6 and 7 of OCL's venue licence, to utilise an unused entrance into the casino from the adjoining glass boardwalk;
 - (b) a new floor plan, under conditions 11 and 12 of OCL's operator's licence.
2. The Commission sought submissions on OCL's proposal from the Secretary for Internal Affairs (the "**Secretary**"), Ministry of Health, SKYCITY Casino Management Limited (Queenstown) ("**SCML**"), Problem Gambling Foundation ("**PGF**"), Gambling Helpline ("**GH**"), Salvation Army and Wakatipu Casino Liaison Group. Submissions were received from the Secretary, GH, SCML and PGF.
3. The relevant licence conditions are as follows:

Venue licence

6. The Licence Holder must obtain the approval of the Commission prior to:
 - (a) construction or design changes to the Casino Venue, but excluding the back of house area used by staff (unless construction or design changes



to this excluded area may impact on matters set out in condition 7 in which case prior approval must be sought);

- (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 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 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.

Operator's licence

- 11. The Licence Holder shall operate in accordance with approved floor layouts showing the position of gaming tables and gaming machines.
- 12. The Licence Holder shall obtain the approval of the Commission 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 the consideration of the Commission. Any change must comply with the Surveillance Standard.

OCL's submissions

4. OCL submitted, in summary, as follows:
- (i) It wants to operate a new restaurant/bar outside its Queenstown casino as a facility conjunct to the casino. It proposes to take over the operation of the neighbouring premises called the Boardwalk Seafood Restaurant and Bar.
 - (ii) It wants to link the casino and the conjunct facility by utilising the currently unused glass boardwalk which is between the two premises.
 - (iii) It proposes that the casino and the conjunct facility be further separated by a permanent screen wall which would be constructed within the casino premises immediately in front of the doors to the skywalk, and by two opaque double-

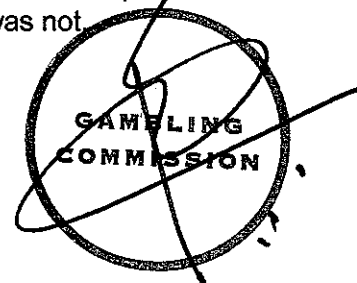


glazed sliding doors at either end of the skywalk. The screen would ensure that gambling activity would not be visible from outside the casino premises, while the sliding doors would provide further separation between the venues. It would also station a security guard between the venues to prevent underage access to the casino.

- (iv) The primary reason for its proposal is that the existing Boardwalk Restaurant caters to a higher end clientele so casino patrons who use the casino do not have a more modest facility from which they may take a break from gambling, to drink and dine.
- (v) The proposal is comparable to the approval allowed for Dunedin Casinos Limited in 2009.
- (vi) The average person would perceive the two premises as being distinct.
- (vii) The integrity and fairness of games would not be impacted in any way.
- (viii) Security and surveillance would be in place at the new entrance, as it is for the main entrance to the casino.
- (ix) The proposal would have harm minimisation benefits as patrons would be more inclined to take a break from gambling to drink and dine.
- (x) Patrons under the age of 20 (and over the age of 18) would be entitled to access the restaurant/bar through its existing entrances, but they would be prevented from accessing the casino.
- (xi) It sought approval to relocate three gaming machines in the casino's gambling area, which would enable the existing doors to the skywalk to be opened up. This in turn would allow the patrons of the casino to walk between the casino and the proposed new facility. The three machines would be relocated to where the existing bar is (which would be removed).

Submissions by the Secretary

5. The Secretary submitted that he had no regulatory concerns with the proposal, but noted a difference between the floor plan OCL submitted with its application and the floor plan attached to OCL's premises licence. He considered that the floor plan submitted by OCL was correct, while the floor plan attached to the premises licence was not.



GH's submissions

6. GH submitted, in summary, that:
- (a) While the impact of having an adjoining dining facility may assist patrons to take a break from gambling, it may also have the opposite effect in that restaurant patrons may decide to gamble at the casino when they would not otherwise have, owing to the ease of accessibility. This may increase opportunities for casino gambling.
 - (b) The proposal with the screen, double-glazed opaque doors and security staff are mitigating factors and would minimise underage access to the casino, as well as preventing visibility of the casino from the new entranceway.
 - (c) The relocation of three gaming machines would not have any impact as they are simply being relocated within the same general area.

Submissions by SCML

7. SCML had no objections to OCL's proposal.

Submissions by PGF

8. PGF submitted, in summary, that:
- (a) It was opposed to a similar application from the Dunedin casino because it considered that the effects of the request would increase opportunities for casino gambling. The Commission came to a different view, but PGF continues to believe that allowing OCL's application would increase opportunities for casino gambling and gambling-related harm, although to a lesser extent than with the Dunedin casino.
 - (b) Should the Commission allow the application, it should formally require OCL to adhere to the undertakings that it made in its application in order to minimise any likely increase in opportunities for casino gambling or harm. That is, OCL should be required to install a solid and permanent screen between the premises; that opaque double-glazed doors be installed at both ends of the glass boardwalk and that security staff always be in place at the secondary entrance.
 - (c) OCL security staff should endeavour to keep excluded people out of the casino.



Analysis

9. OCL sought the Commission's approval for construction and design changes to the Wharf casino to allow OCL to utilise doors leading from the casino across a glass boardwalk to a neighbouring restaurant and bar. This would allow OCL's patrons more direct access to the restaurant premises, which OCL will now operate.
10. These doors, which are currently unused, were open and operational from 1999 until mid-2000 but were then closed, and have had gaming machines in front of them since that time.
11. The Commission considered a similar application by Dunedin Casinos Limited which led to decision GC05/09. In that decision, the Commission first considered whether it had the power to amend a casino venue licence to alter the area or location of a casino's premises as defined in that licence. For the reasons set out in that decision, the Commission held that it could not do so and, as such, it could not approve a casino extension beyond the area defined in the licence.
12. The Commission next considered whether casino operators are precluded from operating conjunct facilities outside the casino premises. The Commission held that casino operators are not so precluded, but went on to give careful consideration to the difference between a facility being separate and conjunct to the casino, and being a *de facto* extension of it. The Commission held that the key to the difference is partly a matter of substance and partly a matter of impression – a conjunct facility could not incorporate any of the key elements of a "casino venue" (as defined) which includes the conduct of games, "money counting, surveillance, storage and other activities related to the conduct and playing of games" and the distinction between the two facilities must be such that patrons would have the impression that the two premises are distinct and separate and that, as they move between the premises, they are leaving one premises and entering another.
13. The Commission was of the view that the delineation between the Wharf casino and the restaurant and bar would be such that the average person would think that the two premises would continue to be distinct. As patrons leave the casino to enter the new facility, they would need to walk:
 - (i) around a permanent screen/wall;
 - (ii) past a security guard;
 - (iii) pass through one set of double-glazed opaque doors;
 - (iv) cross the boardwalk; and



- (v) pass through a second set of double-glazed opaque doors.
14. Gambling at the casino would not be visible from the conjunct facility, which also has other entrances other than from the casino.
15. The Commission considered that OCL's proposal would not impact negatively on the matters set out in condition 7 of OCL's venue licence, nor contravene the intent and purpose of the Act. The Commission approved the proposed construction and design changes to allow the Licence Holder to use the secondary door, but concurred with PGF's submission that the Licence Holder should be required to adhere to the details of its proposal. The approval is therefore conditional on the Licence Holder:
- (i) constructing a permanent screen/wall between the premises, as submitted;
 - (ii) installing the two sets of double-glazed opaque doors, as submitted; and
 - (iii) ensuring that a security guard is always present at the secondary door, as submitted.
16. The Commission understands that OCL's obligation to ensure that a security guard is stationed at the casino entrance is recorded in Minimum Operating Standards for the Wharf casino. Those standards currently refer to a single entrance into the casino. It is a condition of the approval that they are amended so that they refer to "entrances", recording the fact that the security requirements are the same at all entrances, including the new entrance created by the construction changes for which approval is sought.
17. As noted above, the Commission considered a similar application by Dunedin Casinos Limited in 2009. OCL, understandably, relied on that decision in support of its application. The Dunedin application differed from this matter in one respect – DCL's proposal involved the casino operator operating a new conjunct bar/restaurant in addition to the casino's existing food and beverage facilities. OCL's application involves taking over the operation of an existing conjunct bar/restaurant, coupled with the removal of the existing bar facility. This distinction is potentially significant because the Commission would be reluctant to approve construction changes involving the removal of the current bar if its existence had been critical to OCL being granted the premises licence in 1999.
18. The Commission accordingly considered OCL's application to the Casino Control Authority ("**CCA**") for a casino premises licence. The application stated that the casino would not include any bar or restaurant facilities, but that an adjoining restaurant, the Boardwalk Café, would provide food and beverage services to casino patrons. The CCA interim decision granting the licence noted the absence of any restaurant and bar within the proposed casino premises, the proximity of the neighbouring Boardwalk Café



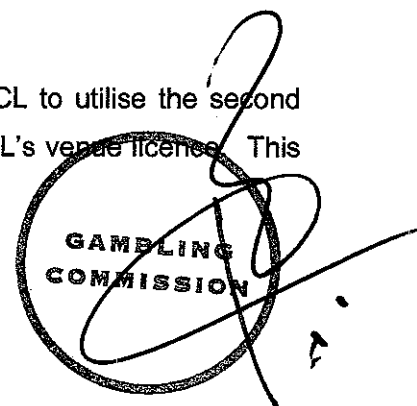
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arrangements for access to it by casino patrons and the presence of other bars and restaurants at Steamer Wharf. The current bar was not, therefore, critical to the CCA granting OCL its premises licence – indeed, the bar did not appear to exist at all until mid-2000, when the secondary doors to the glass boardwalk were closed off.

19. The Commission approved the construction and design changes sought to remove the existing bar. In approving this, the Commission acknowledges that the casino would be left with no facilities other than gambling facilities, but notes that this was the basis upon which the licence was originally approved. Food and beverage were provided, at the time, by the Boardwalk Café as they will be following this decision. The proposed changes restore the access to the restaurant and bar which casino patrons previously enjoyed. In order to ensure that casino patrons have access to non-gambling activities (albeit at a conjunct facility), the approval is conditional upon the Licence Holder maintaining a conjunct bar and restaurant at the Steamer Wharf complex.
20. In relation to the floor plan changes, OCL sought approval to relocate three gaming machines from where the proposed boardwalk entry/exist would be located, to the area currently occupied by the bar. Both GH and PGF raised as an issue the potential of the proposed changes to increase opportunities for casino gambling but proffered no analysis to support that assertion, apart from GH's reference to convenience of access. The Commission is satisfied that, as the only change to the gambling operation is the relocation of 3 gaming machines within the current gambling area, the opportunities for casino gambling would remain unchanged. It suspects that the submissions may have confused the extent of the opportunities available with their attractiveness or convenience of access.
21. The Secretary raised an issue concerning identification of the correct floor plan – the one attached to OCL's application, or the one attached to the premises licence. The correct operational floor plan is the one that OCL attached to its application. The floor plan attached to OCL's premises licence was the floor plan originally approved when the licence was first granted by the CCA. It remains attached to the premises licence to show the boundary of the casino, rather than the current layout of tables and machines.

Decision of the Commission

22. The Commission decided to approve:
 - (a) the construction and design changes sought to allow OCL to utilise the second entrance into the casino, under conditions 6 and 7 of OCL's venue licence. This approval is conditional on the Licence Holder:



- (i) constructing a permanent screen/wall between the casino and the conjunct facility;
 - (ii) installing a set of double-glazed opaque doors at either end of the glass Boardwalk; and
 - (iii) ensuring a security guard is always present at the secondary door.
- (b) the construction and design changes to dismantle the current bar, under sections 6 and 7 of OCL's venue licence. This approval is conditional upon the Licence Holder maintaining a conjunct bar and restaurant facility at the Steamer Wharf complex;
- (c) a new floor plan (~~attached~~), under conditions 11 and 12 of OCL's operator's licence.

Peter Chin
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

25 June 2010

Wharf Casino Floor Layout

