

IN THE MATTER of the Gambling Act 2003
AND of an application by
CHRISTCHURCH CASINOS LIMITED to amend licence conditions 8 and 15 attached to its operator's licence

BEFORE THE GAMBLING COMMISSION

Members: L M Hansen (Chief Gambling Commissioner)
D C Matahaere-Atariki
W N Harvey
S C L Pearson

Date of Application: 24 October 2019

Date of Decision: 14 February 2020

Date of Notification of Decision: 23 March 2020

DECISION ON AN APPLICATION BY CHRISTCHURCH CASINOS LIMITED TO AMEND LICENCE CONDITIONS 8 AND 15 ATTACHED TO ITS OPERATOR'S LICENCE

Application

1. Christchurch Casinos Limited ("**CCL**") applied to the Commission, pursuant to section 139(1)(d) of the Gambling Act 2003 (the "**Act**"), to vary conditions 8 and 15 of its operator's licence.
2. The Commission sought written submissions on the application from the Secretary for Internal Affairs (the "**Secretary**"), Ministry of Health ("**MoH**"), SKYCITY Casino Management Limited ("**SCML**"), Problem Gambling Foundation ("**PGF**"), Salvation Army Oasis ("**SA**") and Dunedin Casino Management Limited. It received submissions from the Secretary, MoH, SCML, PGF and SA. CCL lodged written submissions in reply.

Licence conditions

3. The relevant licence conditions, together with the proposed amendments shown in mark-up, are as follows:

CCL's operator's licence

8. Except where otherwise approved by the Gambling Commission, when the casino is operating the Licence Holder shall ensure that there is at least:At least two table games shall be open for play when the Casino is operating.

1 authorised table game open for play between the hours of midday to 6pm;

2 authorised table games open for play between the hours of 6pm to 3am; and

1 authorised table game open for play between the hours of 3am and 6am.

Between the hours of 6am and midday, the Licence Holder may but shall not be required to offer table gaming in the Casino.

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. 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.
13. A maximum of 4 automatic teller machines is permitted in the Casino Venue outside the Gambling Area (Schedule 1) and Additional Gambling Areas (Schedules 2, 3 or 4).
14. Except as approved in writing by the Commission, the Licence Holder is prohibited from dispensing cash from EFTPOS and like devices in the Gambling Areas (Schedule 1) at all times and Additional Gambling Areas (Schedules 2, 3 or 4) whenever the Additional Gambling Areas are activated pursuant to condition 9B. The approval of the Commission shall be revocable at the discretion of the Commission and may be subject to such conditions as the Commission may from time to time impose.
15. The Licence Holder may use mobile EFTPOS terminals or like devices in the Gambling Areas of the Casino provided that their use is for Food and Beverage purchases and no cash is dispensed. Any extension of use beyond Food and Beverage purposes of such devices shall require the approval of the Commission and may be subject to such conditions as the Commission may from time to time impose. The Executive Director may approve the extension of use if he/she is satisfied it will have no potentially adverse effects. If he/she is not so satisfied, the proposed extension of use must be referred to the Commission for a decision on approval.~~The Licence Holder is prohibited from using mobile EFTPOS terminals (cash or non-cash dispensing) or like devices in the Gambling Area (Schedule 1) at all times and in the Additional Gambling Areas (Schedules 2, 3 or 4) whenever the additional Gambling Areas are activated pursuant to condition 9B unless approved by the Commission. The approval of the Commission shall be revocable at the discretion of the Commission and may be subject to such conditions as the Commission may from time to time impose.~~

Relevant sections of the Act

4. The relevant sections of the Act are as follows:

139 Conditions of casino licence

- (1) The Gambling Commission may specify the conditions of a casino licence or vary or revoke the conditions of a casino licence in the following circumstances:
- (a) on granting a casino operator's licence;
 - (b) on renewing a casino venue licence;
 - (c) on approving a casino venue agreement or an amendment to it;
 - (d) on application by the holder of the casino licence;
 - (e) on its own initiative or on the request of the Secretary.

- (2) A condition of a casino licence specified under subsection (1)—
- (a) must be consistent with this Act; and
 - (b) must contribute to achieving the purpose of this Act; and
 - (c) must contribute to the efficient and effective administration of this Act; and
 - (d) must not permit an increase in the opportunities for casino gambling; and
 - (e) may relate to any matter, including the matters specified in Schedule 1, within the confines of paragraphs (a) to (d).

140 Procedure for specifying, varying, or revoking casino licence conditions

- (1) The Gambling Commission must notify the holder of the relevant casino licence, the Secretary, and any other person who it considers is affected by a proposal to specify, vary, or revoke the conditions of a casino licence.
- (2) Notification under subsection (1) must include—
- (a) the reason for the proposal; and
 - (b) the procedure to be followed before the Gambling Commission makes a decision relating to the proposal.
- (3) The holder of the casino licence, the Secretary, and any other person affected may make written submissions to the Gambling Commission concerning the proposal within 20 working days after the date of the notice under subsection (1) or within any longer period that the Gambling Commission allows.
- (4) The Gambling Commission must consider any submissions made under subsection (3) and may, if it considers it appropriate, seek comment from the casino licence holder on the submissions received from the Secretary or other persons affected.
- (5) The Gambling Commission must notify the holder of the casino licence, the Secretary, and other persons affected of—
- (a) its decision concerning the proposal and the reasons for the decision; and
 - (b) the right to appeal the decision and the process for an appeal.

173 On-licences under Sale and Supply of Alcohol Act 2012

Despite the Sale and Supply of Alcohol Act 2012, an on-licence granted under that Act for a licensed casino must be treated as authorising the sale of alcohol for consumption in the casino while the casino is lawfully operated.

Submissions by CCL

5. CCL submitted, in summary, as follows:
- (a) It has applied to amend two licence conditions as follows:
 - (i) condition 8 – the minimum number of tables that must be open for play when the casino is operating; and
 - (ii) condition 15 – the use of mobile EFTPOS, and like devices, in the Gambling Area.

Condition 8

- (b) It wants to amend condition 8 to allow greater flexibility, in line with that already approved for other casinos. The flexibility will help to manage and match staffing with the demand for tables at different times of the day.
- (c) Condition 8 of the operator's licences for the Dunedin, Hamilton and Queenstown casinos sets out the flexibility it seeks.
- (d) As the casino's licence to serve alcohol is inextricably linked to section 173 of the Act, the current drafting of condition 8 requires a minimum of two tables to be open to allow the service of alcohol, even if there is no demand for them.
- (e) Further, its food and beverage operations are unfairly limited by it being unable to serve alcohol if the casino is not operating. Although rare, it has, on occasion, wanted to offer lunches and/or dinners on days when the casino is required by law to be closed for gambling or, for example, to screen sporting matches which are often at times when it might otherwise be closed. These scenarios would be subject to Commission approval, if outside of the prescribed minimums suggested.

Condition 15

- (f) It wants to amend condition 15 so that it can deploy mobile EFTPOS devices, or similar, such as Apple Pay and PayWave in the Gambling Area to enable the purchase of food and beverages. The devices will not be used to dispense cash.
- (g) While it appreciates the rationale for the imposition of this condition, with the passage of time it is no longer appropriate.
- (h) It also wants to amend the condition to allow the Commission's Executive Director to have a delegated authority to approve the use of mobile EFTPOS devices beyond just food and beverage provided that the Executive Director is satisfied that doing so would not have any potentially adverse effects. It proposes to incorporate drafting similar to that included in conditions 6 and 7 of its venue licence.
- (i) Since condition 15 was drafted, the use of cash in society (and in casinos) has significantly reduced. At that time, limiting the availability of cash on a gaming floor was viewed by the Commission as a key harm prevention and minimisation measure.
- (j) In recent years CCL has increasingly considered and introduced a range of new technologies that assist in keeping customers safe or providing a better standard

of service. These technologies were unavailable, or unreliable, 10 years ago. Two examples include:

- (ii) facial recognition, which is particularly useful to help identify gamblers of interest, or those who have been banned from the casino;
 - (ii) Servizio, which assists in tracking individuals who have long periods or high levels of play.
- (k) Further, the HRP programmes were nowhere near the level of sophistication that they are today. Additionally, all gaming machines have been fitted with Ticket In/Ticket Out functionality and as a consequence, CCL no longer accepts coins. This assists in keeping staff safe as they are not required to carry cash around the floor. Food and beverage staff still carry a small float, so guests can currently pay with cash or chips for food and beverage while at a table or gaming machine.
- (l) The change proposed (to allow the use of mobile EFTPOS) will not only assist in minimising the cash carried, it is also a customer service commonly expected. It also improves business processes in terms of trackability. The drafting of proposed condition 15 still prevents cash from being dispensed and it will have no adverse impact on gambling harm. However, it will have a significant positive effect on customer service.
- (m) While there is a still place for cash, it is likely that the future will largely be cashless. The next big challenge of online gambling is just around the corner – this is also cashless. The casino industry needs to be able to move with the times in order to compete and stay relevant.

Submissions by SCML

6. SCML submitted, in summary, as follows:

- (a) It has no objection to the proposed amendments to condition 8 of CCL's operator's licence, which is designed to replace the mandatory requirement to have at least two table games open for play when the casino is operating with a more flexible arrangement. This would mean that the Licence Holder is not obliged to operate any table games during certain hours.
- (b) In decision GC11/19, the Commission considered an application by SCML to revoke condition 8 of its operator's licence for the Wharf casino. Condition 8 required that at least one table game be open for play from 5.00pm, except where otherwise approved by the Commission. The Commission noted that there is nothing in the Act which requires a casino operator to deploy any particular

gambling product, including table games. That decision sets out the reasons for and against Wharf casino having to have a table game open at all times and concluded that the revocation of the condition was consistent with the Act.

- (c) While Christchurch casino is somewhat larger than Wharf, the reasoning in decision GC11/19 appears to have the same application to the current proposal and it supports the flexibility that CCL seeks.
- (d) It also supports the proposal to permit the use of mobile EFTPOS terminals in Gambling Areas, in circumstances where they are not used to dispense cash. The current licence condition expressly prohibits the use of mobile EFTPOS terminals, whether they be cash or non-cash dispensing, unless approved by the Commission. It appears that the primary driver for the prohibition against mobile EFTPOS was a concern around facilitating access to cash to persons while gambling. However, both MoH and PGF have previously submitted that the introduction of non-cash dispensing mobile terminals was also inconsistent with harm prevention and minimisation approaches. Their concern appears to be based upon a view that the provision of mobile terminals would encourage continuous play, by removing the need for customers to take a break from gambling, in order to pay for food and beverages.
- (e) It notes that there is no requirement for customers who make cash purchases for food and beverage to do so at the outlet from which they were sourced. If the current position is based upon MoH's and PGF's concerns, then it does seem inconsistent, and an unnecessary inconvenience to those who prefer to rely on the use of cards for their purchases and who wish to avail themselves of a casino's food and beverage offerings.
- (f) CCL's proposal has been discussed with SCML's host responsibility team, which has indicated that it would have no concerns if the current prohibition were to be relaxed in the manner proposed.
- (g) The conditions applicable to ATMs and EFTPOS facilities are largely consistent across the casino sector. Should it approve CCL's proposal, the Commission may wish to consider, on its own initiative, making similar amendments to the conditions of all other casino operators.

Submissions by the Secretary

7. The Secretary submitted, in summary, as follows:

Condition 8

- (a) His submission in relation to Wharf casino's application (GC08/18) provided "... that requiring a table to be staffed when no patrons are interested in playing serves no useful purpose". The same rationale applies here, so he supports this proposed amendment.

Condition 15

- (b) CCL's proposed amendment is not necessary. The current drafting of condition 15 is very similar to the condition that applies to every other casino. The Commission has already provided approvals to other casinos to deploy mobile EFTPOS devices for purposes of food and beverage (decision GC15/17 refers).
- (c) The Commission could reject the proposed amendment but consider an application for approval to deploy mobile EFTPOS devices for the purchase of food and beverages under the current drafting of condition 15.
- (d) He does not object to CCL being given approval to deploy EFTPOS devices in the Gambling Area to enable the purchase of food and beverages.

Future decisions concerning the use of EFTPOS devices

- (e) In decision GC09/19, the Commission approved EFTPOS transactions for other purposes, such as Poker tournaments.
- (f) He supports CCL's proposal that future decisions about the possible use of EFTPOS devices at Christchurch casino be determined by the Commission's Executive Director, however delegation could be made concerning all casinos, not just Christchurch casino.

Submissions by SA

8. SA submitted, in summary, as follows:

Condition 8

- (a) The Commission is aware of its concerns about EGM-only casinos following the submissions it made in respect of the Wharf casino. In that case, the Commission concluded that requiring table games to be open without sufficient demand serves no purpose, and it expects that a similar perspective will be taken here, particularly as CCL only seeks a partial removal of the current requirement to have at least two

table games open. However, it expects the Commission to note the difference in size between the Wharf and Christchurch casinos. Christchurch casino is the second-largest in New Zealand and operates almost seven times as many EGMs as Wharf casino.

Condition 15

- (b) It has no issue with EFTPOS terminals or like devices being deployed in the Gambling Area, provided that they are not cash-dispensing and only used for the purchase of food and beverages. It rejects the amendment to provide the Executive Director with an authority to approve wider usage. This is too permissive. Any extensions beyond food and beverage use should be subject to further applications to the full Commission so that any potential impact on gambling harm can be assessed.

Submissions by MoH

9. MoH submitted, in summary, as follows:

- (a) On the face of it, reducing hours of operation for table games seems like a reduction in gambling opportunities and therefore, a reduction in potential harm, but the long-term potential effect of this change is unclear.
- (b) As CCL noted in its application, Dunedin, Hamilton and Queenstown casinos already have similar conditions. Wharf casino had its condition 8 revoked completely so it now has no requirement to operate table games at all. However, Christchurch casino has more gaming tables and gaming machines than any of the abovementioned casinos.
- (c) In previous proposals to vary condition 8, submitters have raised concerns about casinos reducing table game operations and becoming primarily EGM venues.
- (d) It has been argued that reducing table game operations, while still having all their EGMs available will funnel patrons to play EGMs if there is nothing else available. This has been referred to as 'forced choice'.
- (e) It could also be argued that the ratio of machines to tables on the floor as present in licence conditions is meaningless if the ratio of machines and tables operating at a point in time is significantly different.
- (f) SKYCITY Hamilton's recent application to substitute gaming machines for gaming tables further illustrates that EGMs are the most popular and appear to be the primary income source for most casinos in New Zealand.

- (g) If changes to licence conditions keep going in this direction, then it is very likely that table games will disappear from New Zealand and casinos will not be in keeping with what the public considers to be a casino.
- (h) Regardless of what products are made available, it is the casino's responsibility to ensure it has adequate staff to satisfy its various obligations, including those of a responsible host.
- (i) It suggested as follows:
 - (i) There be a temporary relaxation with a report from the operator and the Secretary on the effects of the change (similar to decision GC08/18). It would be useful to have information on current and future utilisation rates for table games as well as EGMs, before and after the proposed change to help assist with decision-making.
 - (ii) As there is limited evidence to determine the effectiveness of CCL's HRP, it would be useful to have an independent evaluation/review of host responsibility effectiveness in practice. This should be standard for all casinos as a matter of course, even if casinos are not applying for changes to their licence conditions.

Submissions by PGF

10. PGF submitted, in summary, as follows:
- (a) CCL's application appears to be an expected consequence of the Commission's decision to allow the Wharf casino to operate with no table games. PGF opposed that application.
 - (b) In decision GC11/19, the Commission noted:

25. The reduced requirements, compared to the larger casinos, at Wharf and Dunedin casinos recognise the difference in size and demand. ...

This implies that size was a deciding factor in the decision to allow Wharf casino to open with no table games staffed or offered.
 - (c) CCL is the second biggest casino in New Zealand. It follows that the wording of the decision precludes CCL from benefitting from that decision.
 - (d) In its original Wharf casino decision (GC08/18), the Commission stated that EGMs were the "most harmful form of gambling". This was raised as a possible reason for refusing Wharf casino's application and added to this that there was no less harmful alternative being offered.

- (e) CCL is not offering any less harmful alternative, meaning anyone who enters the casino during the hours of 6am to 12 noon will only be able to gamble on the most harmful form of gambling, as deemed by the Commission. To provide table games infers they must be able to be used.
- (f) It also draws the Commission's attention to the profile of the moderate risk and problem gambler and argues that this population is most likely at risk with EGMs only being available during 6am to 12 noon.
- (g) It challenges the Secretary's statement that "requiring a gaming table to be staffed when no patron wishes to play serves no useful purpose" (GC11/19, paragraph 25). The purpose it serves is to reduce the potential for harm, because patrons may choose to use the less harmful gambling product if it is being offered. Not staffing table games ensures patrons use the most harmful form of gambling.
- (h) If the operation of the casino during the period of 6am to 12 noon is not profitable for casino shareholders, it should apply for a change of hours and not operate the casino for those periods. Being a monopoly in the northern half of the South Island means there is no threat of other casinos eroding CCL's customer base.
- (i) The Wharf casino decision has permitted SKYCITY to operate a business called a casino which prospective customers will find has no table games available. Those who may have the right to do this are those who had casino licences before the passing of the Act, effectively giving them a monopoly.
- (j) It understands from paragraph 16 of decision GC11/19 that the Act does not "require a casino operator to deploy any particular gambling product, including table games." It challenges this interpretation, because the Act says:

- 34 **Meaning casino gambling**
 In this Act, **casino gambling** –
- (a) **Means gambling –**
 - (i) for which there are game rules; and
 - (ii) that satisfies those game rules; and
 - (iii) which is conducted in accordance with those game rules; and
 - (iv) to which both a casino venue licence and casino operator's licence apply; but
 - (b) Does not include gambling conducted by the Racing Industry Transition Agency referred to in section 120.

- (k) It encourages the Commission to use its powers to provide a definition of what constitutes a casino in terms of gambling products offered. This will provide clarity for gambling providers, treatment and public health services, and the New Zealand public generally.

- (l) The Commission can make a ruling that defines this point still further by comparing the Wharf casino to larger casinos. It could include in its decision that the Commission deems a casino must be of a certain maximum size, in order to attract the concessions that have been given to the Wharf casino. Size could be measured by variables, such as total turnover and/or turnover of different forms of gambling. The current turnover of Wharf casino could act as the benchmark.
- (m) CCL's application is outside of scope of previous Commission decisions and will increase harm, as described by previous Commission decisions, and this will contravene the Act.

CCL's submissions in reply

11. In reply, CCL submitted, in summary, as follows:

- (a) In relation to condition 8:
 - (i) Its initial purpose in seeking amendment of condition 8 was twofold; first to allow food and beverage outlets to be able to operate (including the service of alcohol) at times when casino gambling, particularly on tables, had a very low, or no, demand, and secondly, to allow the flexibility to make the most efficient use of staff during relatively quiet periods.
 - (ii) Its application did not mention that it is still coming out the other side of the Canterbury Earthquakes, as the argument does tire and date. However, the reality is that, prior to the Earthquakes, the casino did operate 24/7. It has yet to return to that level of operation because there is simply not the demand. It therefore currently closes between 3:00am and 11:00am Monday to Friday, and only operates 24 hours over the weekends and if linked on public holidays. It looks forward to the day when demand does warrant a return to a full 24/7 operation. The amendment to its licence is a necessary measure until such a time and the wording suggested is consistent with that already approved by the Commission for other casinos.
 - (iii) At the Commission's Hamilton Hearing, experts regarded tables and EGMs as similar in terms of harm. This appears to be correct in terms of its own experience and in the experience of the Hamilton casino, as the percentage numbers of guests who are excluded as problem gamblers is about 50/50. Play on its EGMs is, relatively speaking, much safer than what can be offered in the Class 4 sector because of the casino's harm minimisation activities. In particular, its HRP is carried out by staff and supported by the most up-to-date technological solutions available anywhere in New

Zealand, if not further afield. All of the mitigation measures remain in place and are fully operational, even if there are no tables open.

- (iv) The suggestion that customers coming into the casino will select an EGM if there are no tables open implies that all customers walking on to the gaming floor are there to gamble. This is simply not the case and was referenced in the Casino Impact Report provided to the Commission in support of its application to renew its casino venue licence. The CIR study found "Of interest from the perspective that the Casino adds to community amenity, beyond providing an additional form of entertainment via gaming, is that 21% of both local patrons and patrons who were visitors to Christchurch were not gaming. They were going to the Casino because it provided a better venue than the available alternatives for eating, drinking or socialising." The Commission can be assured that if there is demand for table play in the early morning, or at any time, and there is capacity, a table will be opened for customers to enjoy. The numbers proposed are the minimum number of tables required to be open and it believes the basic laws of economics apply with regard to supply and demand. Just because Christchurch casino is the second biggest in New Zealand does not mean it is busier, and turnover volume does not necessarily equal busier either.
 - (v) Furthermore, having no tables open because of the lack of demand would be a reduction in the gambling opportunities available. To argue otherwise would suggest it would be acceptable to have an unlimited number of "less harmful" products available.
- (b) In relation to mobile EFTPOS:
- (i) It does not see decision GC15/17 as being an approval for all other casinos to deploy mobile EFTPOS devices for food and beverage purchases. It understood that decision to be in respect of the Hamilton casino alone. That said, this decision and decision GC09/19 do show that the use of mobile EFTPOS is desirable and has become increasingly more so, in terms of customer expectations over the years.
 - (ii) It welcomes an approval to extend mobile EFTPOS usage across all casinos, as suggested by the Secretary.

Analysis

Condition 8

12. The Commission has given considerable thought to the type of variation proposed by CCL, having recently considered applications to vary and revoke condition 8 for the Wharf casino in Queenstown (see decisions GC08/18 and GC11/19).
13. In those decisions, the Commission set out arguments in favour of reducing/removing the minimum table requirement at the Wharf casino (see paragraphs 24 of both decisions GC08/18 and GC11/19), together with arguments in favour of not doing so (see paragraphs 23 of both decisions GC08/18 and GC11/19). Most of these arguments are equally applicable to the current application.
14. Ultimately the Commission revoked condition 8 for the Wharf casino, meaning that the requirement for the operator to deploy a gaming table was removed altogether. In reaching this decision, the Commission considered two arguments to be particularly compelling. First, there is nothing in the Act which requires a casino operator to make available for immediate use any particular form of gambling, including table games.
15. Section 34 of the Act defines casino gambling as follows:
- 34 Meaning of casino gambling**
- In this Act, casino gambling—
- (a) means gambling—
- (i) for which there are game rules; and
- (ii) that satisfies those game rules; and
- (iii) which is conducted in accordance with those game rules; and
- (iv) to which both a casino venue licence and casino operator's licence apply; but
- (b) does not include gambling conducted by the New Zealand Racing Board referred to in section 120.
16. Section 119 of the Act sets out the requirements for casino gambling as follows:
- 119 Requirements for casino gambling**
- A casino may be operated only by a person who holds a casino operator's licence—
- (a) if the casino gambling occurs at a place for which the person also holds a casino venue licence; or
- (b) if the casino operator has an approved casino venue agreement with another person who holds a casino venue licence.
17. All that is required to meet the Act's requirements for casino gambling is for there to be gambling for which there are game rules, and which satisfies those game rules, and which is conducted in accordance with those rules by a person with the appropriate casino licences and, if required, a casino venue agreement.

18. As the governing statute does not require casinos to deploy any table games (meaning to set up gaming tables in their designated Gambling Areas), the source of any regulatory obligation concerning their deployment or availability for immediate use is the licence conditions imposed by the Commission or its predecessor, the Casino Control Authority. In each case, the conditions relating to deployment of table games (expressed as a ratio with deployed EGMs) and having a (lesser) number of table games open for play were originally imposed by the Authority under the predecessor Act, the Casino Control Act 1990. The purposes of that Act and the Gambling Act 2003 are fundamentally different. The Commission is empowered to vary and revoke any existing casino licence conditions pursuant to section 139 of the Act. Variation of obligations to deploy tables or to make tables immediately available for use comes within the Commission's jurisdiction.
19. Secondly, in decision GC11/19, the Commission considered there to be force in a submission made by the Secretary that there is little to be gained by requiring a table game to be open and staffed when there is no customer demand to play that table.
20. The Commission considered these two arguments to be as compelling for the Christchurch casino as they were for the Wharf casino. The fact that the Christchurch casino is far larger than the Wharf casino (and, as such, one would expect gaming tables to be deployed more readily) does not alter the Commission's fundamental conclusion; it sees little point in requiring the Christchurch casino to have tables open when no demand for them exists.
21. In reaching this conclusion, the Commission noted that CCL's proposed amendment varies minimum table game requirements but does not prevent table games being made available at any particular hours of the day. If there were demand from patrons to play casino tables during a period when no table was required to be open, it would expect that CCL would open tables to meet the demand.
22. The principal arguments against amending licence condition 8 relate to public expectation (the general public would expect a casino to offer table games as well as EGMs) and EGMs being the only form of gambling available (which some submitters to the Commission have suggested are the most harmful forms of gambling). Neither of these arguments were sufficiently compelling to persuade the Commission not to amend licence condition 8.
23. Although customers may have expectations about what a casino may offer, there is no statutory requirement for a casino operator to offer any minimum number of table games at specific times and the Authority's reasons for imposing such conditions may no longer be current.
24. In an unrelated application before it, the Commission received extensive expert evidence on the relative risks of harm generated by both EGMs and table games which indicated that

the position is not a straightforward as the submissions that it has recorded in the past have indicated.

Condition 15

25. CCL's proposed amendments to condition 15 would, if approved, allow it to deploy mobile EFTPOS terminals, or similar, in the Gambling Area for the purchase of food and beverages by patrons. No cash would be dispensed. The proposed amendments would also permit the Commission's Executive Director to approve the broader deployment of mobile EFTPOS terminals if he or she were satisfied that their broader use would have no potentially adverse effects.
26. When the Commission developed the cash access licence conditions for New Zealand's casinos, it set out clear guidelines to control the availability of cash in the Gambling Areas because of the link between access to cash by patrons and problem gambling. (See the Interim and Final Decisions on a proposal by the Gambling Commission to revoke the conditions attached to the venue licence held by SKYCITY Auckland Limited and the operator's licence held by SCML, and to specify new conditions in their place, dated 23 December 2005 and 27 March 2006 respectively.)
27. In developing these conditions, the Commission initially proposed the prohibition of all mobile EFTPOS terminals (ie cash dispensing and non-cash dispensing) from the Gambling Areas. Following receipt of submissions on the proposal, the Commission changed its position; it proposed the prohibition of the use of cash-dispensing and non-cash dispensing mobile EFTPOS terminals in the Gambling Areas, but allowing for the deployment of non-cash dispensing terminals in the Gambling Areas to pay for food and beverage purchases, subject to the Commission's approval. (See paragraph 15.5 of the Interim Decision.)
28. The Commission sought submissions on its amended position. The MoH and PGF opposed the retention by the Commission of the power to approve non-cash devices in the gambling area on the grounds that the introduction of non-cash dispensing EFTPOS terminals into the Gambling Areas would be inconsistent with harm prevention and minimisation approaches, and that their deployment would encourage continuous play as patrons would not need to leave their EGM or table to purchase food and beverages.
29. The Commission was not convinced by the objections and decided to provide for discretion to approve the deployment of non-cash dispensing mobile EFTPOS terminals in the Gambling Area for food and beverage purposes.

30. Although the casinos' licence conditions retained this discretion, the Commission sent a clear signal to operators that such approvals would not be easily obtained. Paragraph 10.4 of the Commission's Final Decision provides as follows:

10.4 the Commission decided, by a majority, to reject the MoH and PGF submissions and retain the draft condition as proposed in the Interim Decision. In exercising the discretion which it has retained, the Commission expects that the matters raised by MoH and PGF would need to be addressed satisfactorily and that approvals may not be easily obtained.

31. In recent years, the Commission has exercised its discretion and approved the deployment of mobile terminals at both the Hamilton and Auckland casinos. In decision GC23/15, the Commission permitted SKYCITY to deploy mobile EFTPOS terminals at a burger bar on level 2 of the Auckland casino, part of which was within the casino's Gambling Area. SKYCITY sought the approval so that it could provide a better level of service to its patrons in relation to non-gambling activities in the Gambling Area, and their use was limited to paying for meals at tables.
32. In decision GC15/17, the Commission approved the replacement of three fixed EFTPOS terminals with three non-cash dispensing mobile terminals in the Gambling Area of the Hamilton casino. In this instance, the replacement terminals were not sought for customer experience reasons; rather they were sought by SKYCITY for business continuity reasons - to ensure that customers had access to EFTPOS facilities in the event of outages to the casino's fixed terminals.
33. In decision GC09/19, the Commission permitted the Auckland casino to deploy two mobile EFTPOS terminals in the casino's Main Cashiers' Cage, but also to deploy them, on occasion, within the casino's Gambling Area, but only to allow patrons to pay for Poker tournament fees.
34. Allowing patrons to pay for fees in this manner was to enable SKYCITY to provide better customer service by permitting customers to pay for the fees on the gaming floor, rather than requiring them to walk to a Cashiers' Cage to pay. It also prevented unnecessary queuing issues for regular customers using the Main Cage. But in providing this approval, the Commission still imposed a condition which stated that the tournament Poker fees could not be paid for while patrons were sitting at a gaming machine or a gaming table.
35. As it considered CCL's application, the Commission concluded that there can be sound reasons for allowing mobile EFTPOS devices to be deployed in the Gambling Area of the Christchurch casino in a controlled manner. There is no doubt that society has changed dramatically since the cash access licence conditions were developed in 2005/06; cash is used much less frequently these days, and customers have an increased expectation of being able to pay for products or services with a minimum of difficulty. As time goes on,

these trends will almost certainly continue, with an increasing reliance on electronic payment systems and a decreasing reliance on cash.

36. The Commission also accepted CCL's submission in relation to its HRP and other developments; New Zealand casinos (and the Christchurch casino in this case) unquestionably offer safer environments in 2020 than they did in 2005/06 because host responsibility experiences continue to develop and associated systems are continually improving.
37. The Commission also noted an inconsistency in that casino patrons can purchase food and beverages from their gaming location provided that they pay with cash or chips, but they cannot make the same purchase using mobile EFTPOS terminals. Although permitting payment by mobile EFTPOS terminals may result in fewer breaks from gambling, the Commission considered the inconsistency to be illogical, particularly as payment for food or beverages by EFTPOS would generally take greater time to process than payment by cash or chips.
38. Having determined that provision should be made for CCL to deploy mobile devices for the purchase of food and beverages within the casino's Gambling Area, the Commission next considered whether to amend condition 15 in the manner proposed by CCL, or to provide for approval pursuant to the current condition 15, as proposed by the Secretary.
39. The Commission saw no need to amend condition 15. The current condition already permits the Commission to approve the deployment of the mobile devices that CCL seeks. The condition is functioning as intended.
40. The Commission considers that it should maintain oversight over EFTPOS devices within casinos and does not consider it appropriate, at this point in time, to provide the Executive Director with delegated power to approve their deployment.
41. Applications for approvals under condition 15 are not common, so there is no efficiency objection to the Commission continuing to approve each application received (unlike, say, applications for construction and design changes, which are very common, where the Executive Director has a delegated authority to approve).
42. In the light of the general trend towards electronic payments, and away from cash payments, the Commission is of the view that there may be value, at a future date, in commencing a comprehensive review of the value of the practice of restricting access to cash in casinos, as it has not considered the matter in detail since 2005. In any such investigation, the Commission would consult widely in order to receive a broad range of views.

Decision

43. The Commission:

(a) The Commission varied condition 8 of CCL's operator's licence, pursuant to section 139(1)(d) of Act. Condition 8 now provides as follows:

8. Except where otherwise approved by the Gambling Commission, when the casino is operating the Licence Holder shall ensure that there is at least 1 authorised table game open for play between the hours of midday to 6pm, at least 2 authorised table games open for play between the hours of 6pm to 3am, and at least 1 authorised table game open for play between the hours of 3am and 6am. Between the hours of 6am and midday, the Licence Holder may, but shall not be required to, offer table gaming in the Casino.

(b) The Commission declined to vary licence condition 15 of CCL's operator's licence, pursuant to section 139(1)(d) of the Act, as proposed.

(c) The Commission provided CCL with an approval under condition 15 of CCL's operator's licence, to deploy mobile devices in the Gambling Area of the Christchurch casino. The approval is granted on the condition that the terminals are to be used only to pay for the purchase of food and beverages.

Right of appeal

44. Pursuant to section 235 of the Act, a person affected by this decision may appeal that decision to the High Court. An appeal must be made within 15 working days of the date of notice of the Commission's decision, or any longer period that the High Court may allow.



Lisa Hansen
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission



March 2020

