

**IN THE MATTER** of the Gambling Act 2003

**AND** on an application by **OTAGO CASINOS LIMITED** to redesignate the Gambling Area at the Wharf casino, and by **SKYCITY CASINOS MANAGEMENT LIMITED** to install an ATM machine

**BEFORE THE GAMBLING COMMISSION**

Members: G L Reeves (Chief Gambling Commissioner)  
L M Hansen  
W N Harvey  
S C L Pearson

Date of Application: 4 February 2019

Date of Decision: 12 April 2019

Date of Notification  
of Decision:  May 2019

**DECISION ON AN APPLICATION BY OTAGO CASINOS LIMITED TO REDESIGNATE THE GAMBLING AREA AT THE WHARF CASINO, AND BY SKYCITY CASINO MANAGEMENT LIMITED TO INSTALL AN ATM MACHINE**

**Introduction**

1. SKYCITY Casino Management Limited ("**SCML**") and Otago Casinos Limited ("**OCL**") (together the "**Applicants**") applied to the Commission, pursuant to section 139(1)(d) of the Gambling Act 2003 (the "**Act**"), to redesignate the Gambling Area at the Wharf casino and to attach a new licence condition, 13, to SCML's operator's licence for the Wharf casino.
2. If the Commission approved these amendments, they sought approval to install an ATM at the entrance to the casino (within the casino venue, but outside of the designated Gambling Area), pursuant to condition 13.
3. The Commission sought submissions on the applications from the Secretary for Internal Affairs (the "**Secretary**"), Problem Gambling Foundation ("**PGF**") and Salvation Army Oasis ("**SA**"), receiving submissions from all three.

### Licence conditions

4. The relevant licence conditions are set out below, with the proposed amendments shown in mark-up:

#### OCL's venue licence

9. The Gambling Area within the Casino Venue comprises the area specified in thea plan attached as Appendix A to these conditions approved by the Authority dated 18 June 1999.

#### SCML's operator's licence (Wharf casino)

13. A maximum of 1 automatic teller machine is permitted in the Casino Venue outside the Gambling Area.
17. The Licence Holder is required to notify the Commission if it moves ATMs in the Casino Venue or if it installs or moves non-cash dispensing EFTPOS terminals or like devices in the Gambling Area.

### Relevant sections of the Act or Regulations

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

#### Gambling Act 2003

##### 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 purposes 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.

#### **Gambling (Harm Prevention and Minimisation) Regulations 2004**

##### **5 Restriction on automatic teller machines in class 4 and casino venues**

The holder of a class 4 venue licence or casino operator's licence must ensure that there are no automatic teller machines available in the gambling area of a venue in which it conducts gambling.

#### **The Applicants' submissions**

- 6. The Applicants submitted, in summary, as follows:
  - (a) They want to install an ATM at the Wharf casino, just inside the entrance to the casino, which currently forms part of the Gambling Area.
  - (b) Pursuant to regulation 5 of the Gambling (Harm Prevention and Minimisation) Regulations 2004 ("**Regulations**"), the holder of a casino operator's licence must ensure that there are no ATMs available in the gambling area of a venue in which it conducts gambling. To comply with the Regulations will require a variation to the casino's Gambling Area.
  - (c) Unlike the licence conditions for the other casinos, there are no restrictions on the maximum number of ATMs that are permitted outside the Gambling Area at the Wharf casino.
  - (d) Condition 17 attached to SCML's operator's licence for the Wharf casino specifies that the Licence Holder is required to notify the Commission if it moves ATMs in the casino venue, or if it installs or moves non-cash dispensing EFTPOS terminals or like devices in the Gambling Area. While condition 17 may indicate that the deployment of an ATM only requires notification to the Commission, in the context of the conditions applicable to the other casinos, it appears more likely that such a proposal would require a variation to the conditions specifying the maximum number of ATMs that are permitted.

- (e) Currently the nearest ATM to the Wharf casino is a 5 minute walk away, which represents an inconvenience to casino patrons wanting to make use of such facilities. The second Queenstown casino, which is of a similar size to the Wharf casino, is permitted one ATM outside the Gambling Area. The same restriction should apply to the Wharf casino location.
- (f) As the entire casino venue at Wharf casino is currently designated as Gambling Area, an amendment to that Gambling Area would be needed to enable the ATM to be deployed at the casino venue.
- (g) There is precedent for such an amendment; in decision GC17/15, the Commission agreed to the reduction of the Gambling Area at Christchurch Casino to enable the deployment of two additional ATMs in that casino.
- (h) The area in which it proposes to deploy the ATM is monitored by Security personnel and is subject to CCTV coverage.
- (i) Pursuant to condition 9 of OCL's venue licence, the Gambling Area within the casino venue comprises the area specified in a plan approved by the Casino Control Authority dated 18 June 1999. The casino venue comprises two parts; one accessible by the public and used for gambling purposes, while the other is back of house and is accessible only by casino staff for casino support functions.
- (j) They have never used the back of house area for gambling and there is no intention to use it for such purposes in future. Its current designation as Gambling Area is unnecessary and they wish to remove it.
- (k) Similarly, the entrance to the casino has never been used to deploy gambling products and the current inclusion of this area as part of the designated Gambling Area is unnecessary. Excluding part of the casino entrance from the Gambling Area designation will allow them to use it to deploy an ATM.

#### **SA's submissions**

7. SA submitted that the request to install one ATM on site is reasonable, provided that the approval is limited to a maximum of one machine and that it is installed outside of the Gambling Area.

**PGF's submissions**

8. PGF submitted, in summary, as follows:
- (a) It has reservations about making a submission on this matter while another issue at the Wharf casino has not been decided by the Commission; namely an application by SKYCITY to operate the Wharf casino with no gaming tables.
  - (b) The current dates for submissions to be filed on that matter do not allow it to await the outcome before submitting on this proposal. Notwithstanding this, it notes that the ATM will only be available to the people on the casino gambling floor. People who use the ATM will only be using it for gambling purposes. There can be no other reason to have an ATM there and as such it will be available to those who try to set a limit on their play. This reduces the ability to minimise gambling harm and increases the chance of increasing gambling harm.
  - (c) As the placement of an ATM increases the chances of gambling harm, this application should be declined.

**Secretary's submissions**

9. The Secretary submitted that the Applicants' proposal raises no issues of regulatory concern and he does not oppose it. He notes that the Applicants accept that a limit of one ATM should be added, and that Queenstown casino has one ATM.

**Applicants' submissions in response to PGF's submission**

10. In response, the Applicants submitted, in summary, as follows:
- (a) This application has no connection to the application to operate the casino without tables. PGF has not indicated why it has reservations about making a submission while that issue remains outstanding and they can see no barrier to determining this matter now.
  - (b) If the Commission approves the proposal to reduce the designated Gambling Area, then the positioning of the ATM would comply with regulation 5 of the Regulations. They acknowledge that the ATM will be used primarily by persons entering or exiting the Gambling Area, but the positioning is consistent with the Regulations and a similar approach has been taken at other casinos.
  - (c) The proposed location is for the convenience of customers, and there is no evidence to indicate that the ATM's position would cause harm.

## Analysis

11. The Applicants have sought Commission approval to redesignate the Wharf casino's Gambling Area; in part to remove the back of house area from the designated Gambling Area, and in part to remove the casino's entrance lobby. If the Commission approves the redesignation of the entrance lobby, the Applicants want to install an ATM in that space.
12. The Commission has previously considered whether it has the power to redefine a casino's Gambling Area, holding that it can do so provided that the amended area does not extend beyond the casino venue as defined in the casino venue licence, and the licence conditions defining the area are consistent with section 139(2) of the Act.
13. As the current proposal reduces the casino's designated Gambling Area, it will not extend the casino venue beyond the area defined in the licence. The Commission was satisfied that the proposed licence conditions are consistent with the section 139(2) criteria; namely that they:
  - (a) must be consistent with this Act; and
  - (b) must contribute to achieving the purposes 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).
14. The Commission next considered whether to approve the placement of an ATM at the entrance to the Wharf casino, which no longer forms part of the casino's designated Gambling Area.
15. Given its proposed location, there is little doubt that the proposed ATM will be used mainly, if not solely, by casino patrons. The Commission recognised that access to cash has the potential to increase the risk of harm suffered by problem gamblers. As it noted in previous decisions (see GC17/15 and GC07/05), in making decisions about cash access outside the controls already imposed by Regulation 5 of the Gambling (Harm Prevention and Minimisation Regulations 2004 (which prohibits locating ATMs within the gambling area of a casino), the Commission is called upon to strike a balance between enabling a casino operator to meet the customer services expectations of gambling and non-gambling patrons and protecting at risk patrons.
16. The Commission was of the view that allowing a single ATM to be placed at the entrance to the casino would strike the appropriate balance. Casino patrons can reasonably expect to have access to cash by means of an ATM in or around a casino. While casino patrons will undoubtedly use cash withdrawn from an ATM at or near a casino for gambling, that will not be the only purpose for which withdrawn cash will be used.

Patrons will withdraw cash for other purposes, such as purchasing food, drink, or to spend elsewhere.

17. Even cash withdrawn for the purposes of gambling will not, in most cases, result in harm. PGF's submission that all cash used for gambling will increase harm involves an assumption that all gambling is harmful, but that assumption is not consistent with the Gambling Act which permits casino gambling while requiring steps to be taken to minimise harm. Most casino patrons are not problem gamblers and casinos are required by their Host Responsibility Programmes to monitor the behaviour of patrons in order to identify and assist problem gamblers. The presence of an ATM within the casino venue, where it can be the subject of surveillance and monitoring, is more likely to assist, rather than undermine, measures intended to minimise harm.
18. SCML's proposal is consistent with approved ATM locations at other casinos and with Regulation 5.
19. The Commission specifies the addition of licence condition 13 to SCML's operator's licence for the Wharf casino (with the subsequent licence conditions being renumbered accordingly) and approves the installation of one ATM at the casino's entrance.

#### **Decision**

20. The Commission:
  - (a) approved the redesignation of the Gambling Area at the Wharf casino by varying condition 9 of OCL's venue licence for the Wharf casino, pursuant to section 139(1)(d) of the Act. Condition 9 now provides as follows:

##### **OCL's venue licence**

9. The Gambling Area within the Casino Venue comprises the area specified in the plan attached as Appendix A to these conditions.

- (b) attached a new licence condition 13 to SCML's operator's licence for the Wharf casino, pursuant to section 139(1)(d) of the Act. Condition 13 provides as follows:

##### **SCML's operator's licence (Wharf casino)**

13. A maximum of 1 automatic teller machine is permitted in the Casino Venue outside the Gambling Area.

- (c) approved the installation of one ATM machine at the entrance to the Wharf casino, pursuant to condition 13 of SCML's operator's licence for the Wharf casino.



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Graeme Reeves  
Chief Gambling Commissioner

for and on behalf of the  
Gambling Commission

8 May 2019

