

IN THE MATTER of the Gambling Act 2003

AND on application by **CHRISTCHURCH CASINOS LIMITED** for approval of construction and design changes

BEFORE THE GAMBLING COMMISSION

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

Date of Application: 3 September 2010

Date of Decision: 15 October 2010

Date of Notification
of Decision: 1 November 2010

**DECISION ON APPLICATION BY CHRISTCHURCH CASINOS LIMITED
FOR APPROVAL OF CONSTRUCTION AND DESIGN CHANGES**

Introduction

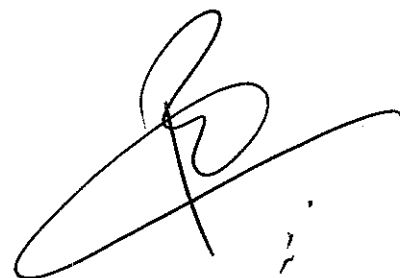
1. Christchurch Casinos Limited ("**CCL**") applied to the Gambling Commission ("**Commission**") for approval of construction and design changes to allow it to build a rooftop bar. The Commission sought submissions on the application from the Secretary for Internal Affairs ("**Secretary**"), Gambling Helpline, Salvation Army, Ministry of Health and the Problem Gambling Foundation ("**PGF**") The Commission received submissions from the Secretary and PGF.

Relevant licence conditions

2. The relevant licence conditions are as follows:

Venue licence

- 5 The licence holder shall lodge and maintain with the Commission and the Secretary updated as built architectural floor plans of Levels 3 and 4 of the Casino Venue showing walls, structures and dimensions. Updated as built architectural floor plans shall be lodged with the Commission and the Secretary if the Licence Holder makes alterations to Levels 3 and 4 the Casino Venue requiring building consent from a territorial authority



- 6 Subject to the provisions of condition 7, the Licence Holder must obtain the approval of the Commission prior to:
- (a) construction or design changes to Levels 3 and 4 of the Casino Venue, including the Gambling Area (Schedule 1) and alternate Gambling Area (schedule 2) but excluding the foyer and bar areas on Level 3 outside the Gambling Area (unless construction or design changes to any of these excluded areas 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 alternation 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 Levels 3 and 4 of 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)

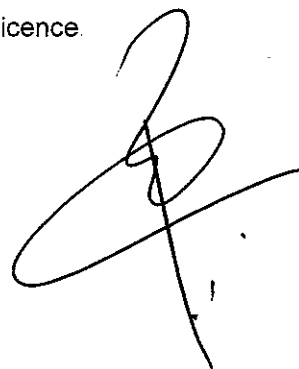
- 7 The Licence Holder must notify the Executive Director of any proposed changes to the construction or design of Levels 3 and 4 of the Casino Venue, including the Gambling Area (schedule 1) and alternate Gambling Area (schedule 2) but excluding the foyer and bar areas outside the Gambling Area. Notification 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

Application by CCL

3. CCL applied for approval of construction and design changes to allow it to build a rooftop bar, on the basis that the rooftop is within the "casino venue" as defined by its venue licence. CCL submitted that:

- (a) As the proposed development falls within the licensed casino venue, it will not amount to an extension of the Venue as defined in the licence.



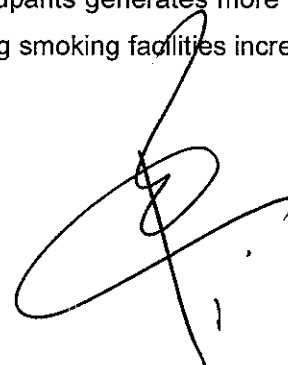
- (b) With regard to the construction and design changes, the current licence conditions do not expressly cover the new area. The stairs and associated stair-lift (the sole point of access) will go into an area on Level 4 which is currently the smoking area and the smoking area will be relocated to the rooftop.
- (c) The area is intended to be R 20. The sole means of access is via the gambling area so that the area will be effectively R 20 by regulation. That would change only if the building or the gambling area were changed in the future so as to allow a point of access outside the designated gambling area.
- (d) The bar would not have any negative impact on the matters set out at condition 7 of its venue licence.

Submissions by the Secretary

- 4. The Secretary had no regulatory concerns with the proposal.

Submissions by PGF

- 5. PGF opposed the application for construction and design changes on the grounds that:
 - (a) it will increase the opportunities for casino gambling;
 - (b) the increase in overall space in the casino will generate more room for gamblers around the tables and EGMs which will make them more attractive and likely to be used, something which equates with an increase in opportunities;
 - (c) an increase in space will be "an increase in the total player space at table games" which is defined as amounting to an increase in opportunities (s 12(2)(c)), and
 - (d) providing a designated smoker's area on the roof top would increase the attractiveness and use of the casino by potential and actual problem gamblers (because of the relationship between smoking and problem gambling), increase the amount of casino gambling and the amount of harm.
- 6. PGF's submission referred to its "clinical experience" and "clinical knowledge" to support the contentions (that increasing space for the same number of occupants generates more room around tables and makes them more attractive and that providing smoking facilities increases



attractiveness, use of the casino and increase in gambling and an increase in harm) but the detail of the clinical information was not set out.

7. In summary, most of PGF's submissions rested on two propositions, namely:
- (a) Anything which makes gambling more enjoyable and attractive amounts to an increase in the opportunities for casino gambling.
 - (b) Anything which makes gambling more enjoyable and attractive will result in more gambling activity which, in turn, will result in more harm.

CCL's submissions in reply

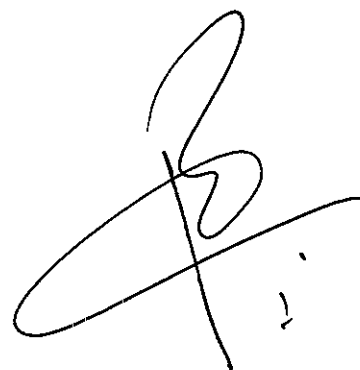
8. In reply, CCL submitted that:
- (a) The design and construction changes create a true respite area from the gambling areas and the PGF submission that the changes will create more room around the gambling tables and EGMs is factually incorrect.
 - (b) The changes will move the smoking facilities further away from the gambling area. While the number of problem gamblers who smoke may be proportionately higher than in the general population, a large number of customers smoke and gamble responsibly.

Analysis

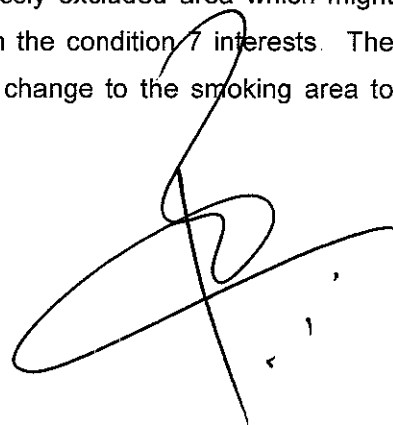
9. The proposed rooftop bar falls within the defined casino venue. The casino venue licence for CCL defines the casino venue as:

30-38 Victoria Street, Christchurch, New Zealand, being that parcel of land containing 3184 25 square metres or thereabouts, being Lot 1 Deposited Plan 3178 (Canterbury Land Register) (Certificate of Title 268/116) (subject to building line restriction 348905)

10. The venue definition does not contain a height element or restriction and the proposed bar falls within the current footprint. Its development would not, therefore, involve an extension to the casino venue.
11. The Commission does not agree with either of the two propositions which underpin PGF's submissions:

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- (a) The Commission has consistently differentiated between the number of opportunities available (which the Gambling Act 2003 (“Act”) controls) and their attractiveness (which the Act does not control). The Act restricts increases in opportunities, not increases in turnover from the same opportunities.
 - (b) The Commission has had to reconcile the fact that the Act permits gambling, a potentially harmful activity, while seeking to minimise the potential for harm. That reconciliation is not possible if gambling is simply equated with harm, as PGF’s submission does. Objections must focus on minimising harm more specifically than simply reducing gambling activity in the round, on the basis that reducing gambling activity reduces harm.
12. PGF’s submission on section 12(2)(c) (“an increase in total player space at table games”) is one which would have potential merit in circumstances where more room were being created around tables which are not subject to maximum player rules, such as Roulette. The proposed development however does not increase the room or space near any of the tables. As a matter of fact, no such increase would arise from the proposed changes.
13. The Commission rejects the other PGF objections for the following reasons:
- (a) Increasing the attractiveness of existing opportunities is not increasing the opportunities
 - (b) Increasing the attraction of gambling facilities is not objectionable on a harm-minimisation basis alone. The Commission is concerned with minimising and alleviating problem gambling, not minimising gambling in the hope that problem gambling will thereby be reduced proportionally.
 - (c) The provision of smoking facilities at an even greater distance than the current area on Level 4 would not seem to create a greater risk of problem gambling. If anything, the creation of new, more pleasant but slightly more distant smoking facilities would be expected to encourage proper breaks in play
14. The rooftop is not part of levels 3 and 4 and, therefore, is not (currently) subject to conditions 6 and 7 of CCL’s venue licence. It is not even an expressly excluded area which might become subject to approval because of potential impact on the condition 7 interests. The only part of the development caught by condition 7 is the change to the smoking area to

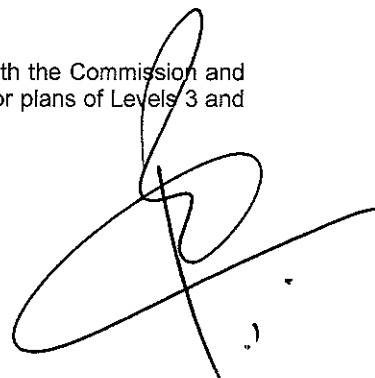
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create stair access on Level 4 leading to the roof. The proposed development would create a new point of entry to Level 4, albeit that the only people to enter level 4 from the new extension will be people who have already gone through level 4 to access the rooftop bar. Technically, the only part of the proposed development requiring approval under the current conditions is the conversion of the current smoking area on Level 4 to a stairway and stair-lift.

15. In the Commission's view, none of the matters listed under condition 7 will be negatively affected by the proposal. The new point of entry to level 4 will not create any issues regarding access by persons under 20, because the only patrons to enter level 4 from the rooftop will be patrons who will have first entered level 4 via one of the existing entrances.
16. The approval is accordingly dependant upon the roof top area and its points of access being developed exactly as proposed. In addition, as the rooftop area will be connected directly to, and accessible from, the gambling area, the Commission proposes to amend conditions 5, 6 and 7 to include the newly developed area.

Decision of the Commission

17. The Commission approved the application for construction and design changes to allow CCL to build a rooftop bar. The approval is conditional in all respects on the design and construction being carried out strictly in accordance with CCL's application and attached plans.
18. The Commission proposes a variation to CCL's venue licence to include the rooftop area within the scope of the design and construction conditions, and hereby notifies CCL, the Secretary and PGF, of its intention to vary the conditions of CCL's venue licence under section 139(1)(e) of the Act. The reasons for the proposal are set out in paragraphs 14 to 16 above.
19. The following variations are proposed:
- (a) Condition 4 to be varied to include:
- Rooftop area includes any structures or developments on the rooftop of the venue
- (b) Condition 5 to be varied to provide:
- 5 The licence holder shall lodge and maintain with the Commission and the Secretary updated as built architectural floor plans of Levels 3 and



4 and the rooftop area of the Casino Venue showing walls, structures and dimensions. Updated as built architectural floor plans shall be lodged with the Commission and the Secretary if the Licence Holder makes alterations to Levels 3 and 4 and the rooftop area of the Casino Venue requiring building consent from a territorial authority.

(c) Condition 6 to be varied to provide:

- 6 Subject to the provisions of condition 7, the Licence Holder must obtain the approval of the Commission prior to:
- (a) construction or design changes to Levels 3 and 4 and the rooftop area of the Casino Venue, including the Gambling Area (Schedule 1) and alternate Gambling Area (schedule 2) but excluding the foyer and bar areas on Level 3 outside the Gambling Area (unless construction or design changes to any of these excluded areas 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 alternation 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 Levels 3 and 4 and the rooftop area of 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).


(d) Condition 7 to be varied to provide:

- 7 The Licence Holder must notify the Executive Director of any proposed changes to the construction or design of Levels 3 and 4 and the rooftop area of the Casino Venue, including the Gambling Area (schedule 1) and alternate Gambling Area (schedule 2) but excluding the foyer and bar areas outside the Gambling Area. 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.

20. Submissions concerning the proposed variations should be made in writing to the Commission within 20 working days after the date of this notification in accordance with section 140(3) of the Act. The Commission will address the proposed variation of the conditions at a later meeting, in light of submissions received on the proposal.


Peter Chin
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

1 November 2010

