

IN THE MATTER of the Gambling Act 2003
AND of an application by
CHRISTCHURCH
CASINOS LIMITED to
approve construction of
smoking areas

BEFORE THE GAMBLING COMMISSION

Members: P Chin (Chief Gambling Commissioner)
K M Ford
M M Lythe
P Stanley
G Reeves

Date of Application: 3 November 2004 (received 5 November 2004)

Date of Decision: 19 November 2004

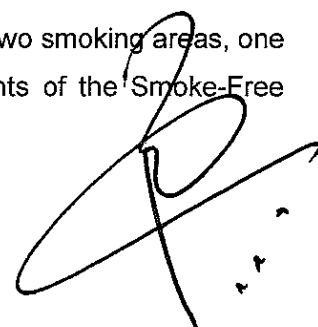
Date of Notification of Decision: 2 December 2004

DECISION

**ON APPLICATION BY CHRISTCHURCH CASINOS LIMITED
TO APPROVE CONSTRUCTION OF SMOKING AREAS**

Application

1. Christchurch Casinos Limited (the **"applicant"**) applied to the Gambling Commission (the **"Commission"**) under section 139 of the Gambling Act 2003 (the **"Act"**) to:
 - (a) amend conditions 1 and 2 of its casino venue licence to substitute "Commission" for "Authority"; and
 - (b) grant approval under those conditions to changes in the design of the casino premises as set out in plans prepared by Warren & Mahoney, numbered A0 01, A1.01, A1.02, A2 01, A3.01 and A3 02 and ventilation drawings 3931412/H001 and 3931412/H002 prepared by Beca Carter Hollings & Ferner Limited.
2. The proposed design changes are for the purpose of establishing two smoking areas, one for patrons and one for staff, which comply with the requirements of the Smoke-Free Environments Act 1990



Key issues

3. The principal issues for consideration of the Commission included:
 - (a) whether it was appropriate for the Commission to adopt the powers formerly exercised by the Authority under conditions 1 and 2; and
 - (b) whether the proposal complied with the statutory criteria set out in section 139(2) of the Act, and the requirement not to increase opportunities for casino gambling, in particular.

Licence conditions

4. Conditions 1 and 2 of the applicant's venue licence provide as follows:
 - 1 **Casino premises to be designed, developed, constructed, fitted out and commissioned for operation in accordance with application**

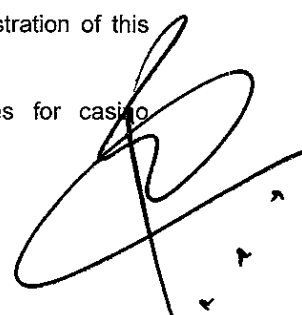
The casino premises shall be designed, developed, constructed, fitted out and commissioned for operation generally in accordance with the application of the licence holder or with such changes as may from time to time be approved by the Authority, provided however that nothing in this condition shall apply in respect of any matter specified in the Second Schedule to the Casino Control Act 1990 ("the Act")
 - 2 **Approval of plans and construction documentation**

The licence holder shall submit developed sketch plans for the Authority for initial approval, upon the grant of which working drawings and specifications for the various tender packages shall be submitted

The Authority shall approve or not approve the said sketch plans within 10 working days of receipt, and shall approve or not approve the said working drawings and document specifications within 5 working days from the date of receipt

Statutory criteria

5. Section 139(1) of the Act provides that the Commission may specify, vary, or revoke conditions of a casino licence by an application by the holder of the casino licence, or at the Commission's own initiative, or at the request of the Secretary of Internal Affairs.
6. Section 139(2) of the Act provides that:
 - (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)

Submissions by the applicant

7. The applicant wished to establish areas for smokers which comply with new restrictions in the Smoke Free Environments Act 1990 taking effect on 10 December 2004. The applicant submitted that, in order for the Commission to review and approve the changes to the plans to provide for the areas, it was necessary for it to vary conditions 1 and 2 to substitute "Commission" for "Authority".
8. It was noted in a letter accompanying the application (from solicitors for the applicant) that:
 - (a) building consent had been granted for the proposed structural changes by the Christchurch City Council;
 - (b) there were not considered to be any affected parties; and
 - (c) the Casino Venue Licence and the Casino Operator's Licence were both held by the applicant
9. On request, the applicant provided the following additional information:
 - (a) The proposal involves the creation of two smoking areas – one for patrons and one for staff – both located on Level 3 of the casino premises.

The patron's smoking area involves construction of a new mezzanine floor above the entrance to the restaurant. The area will be open to the sky.

The staff smokers' area will be constructed from the existing staff smoking room. The existing room will be partitioned and part of it incorporated into the main (non-smoking) staff room. The new smokers area will be opened up by removing the existing curved window on the side of the building, and installing a new hand-rail.
 - (b) The smoking areas are of the following dimensions:
 - patrons' – 4.3m x 8m
 - staff – 3.3m x 2.3m.
 - (c) It is not proposed to change the external design of the building – both smoking areas will be incorporated within the existing footprint for the casino venue.
 - (d) Both of the proposed smoking areas are outside the designated gambling area.

- (e) There is no intention that the smoking areas should be used for gambling purposes in future.

Submissions to the Secretary

10. The application was forwarded to the Department on 5 November. The Department responded on 18 November, advising that the Secretary had no objections to amending conditions 1 and 2 of the premises licence in order to replace "Authority" with "Gambling Commission". In relation to the approvals sought for the construction of the two smoking areas, it was stated that:

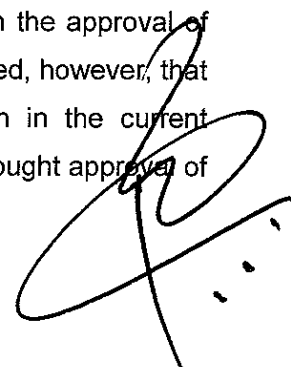
The Christchurch Casino Compliance Unit investigated the proposal thoroughly and conducted a physical tour of the new areas still under construction.

Two smoking areas are proposed, one for players and members of the public and one for staff. Neither poses an increased risk for unauthorised access or access by minors since access to the smoking areas will be directly from the gambling area. Accordingly the Secretary has no objection to the construction of the smoking areas

11. The Secretary was of the view that the proposed smoking areas would be within the designated gambling area. In this regard, the Secretary noted that the operator had stated that it did not intend to conduct gambling in the smoking areas, and confirmed that, due to their relatively small size and partial exposure to the elements, it was unlikely that gambling could be conducted there. The Department's letter concluded by stating that it was the Secretary's view that it was for the Commission "whether or not it wishes to formalise by way of licence conditions that gambling will not be conducted in the smoking areas".
12. On receipt, the Commission forwarded the Secretary's submission to the applicant, seeking confirmation that the smoking areas would be outside the gambling area, as earlier advised. Confirmation was received on 18 November 2004. The Commission also satisfied itself on this point by reviewing plans of the designated areas as agreed by the Authority on 24 May 2002. In particular, it was noted that the area of the Grand Café restaurant over which the patron's smoker's area is being built is not part of the designated gambling area.

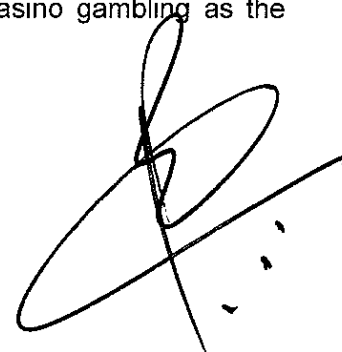
Analysis

13. As an initial point, it was not entirely clear that approval was required by the applicant to the proposal under condition 2. That condition appeared to be directed to the initial development of the casino premises, and the Authority's involvement in the approval of sketch plans and construction documentation at that time. It was accepted, however, that on its face, the condition might be interpreted as having application in the current circumstances, and that out of caution, the applicant had appropriately sought approval of



plans of the smoking areas under this condition. The Commission anticipated that condition 2 might be reviewed in the context of a general review of licence conditions to be undertaken by the Commission, at which point the continuing relevance of condition 2 could be assessed

14. Regarding the proposal to substitute "Commission" for "Authority" in conditions 1 and 2, the Commission noted that in previous decisions it had accepted that it could make conditions which contemplated a level of administrative approval. It was recalled that the Commission had indicated in those decisions that it did not consider its power to provide such conditions to be unconstrained. It had been determined by the Commission that in any given instance, the need to give primacy to statutory requirements (including consultation requirements with the Department and affected parties) needed to be balanced by the need for the Commission to operate efficiently.
15. In the circumstances, and pending a general review of licence conditions, the Commission determined it to be appropriate to provide itself with the same approval powers exercised by the Authority in relation to conditions 1 and 2. The Commission noted in particular that:
 - (a) it was anticipated that the design of the casino premises may need to be revised from time to time, and it may therefore be appropriate to provide an approval mechanism which did not involve amendment of the licence conditions in all circumstances. This was consistent with the efficient administration of the Commission's functions; and
 - (b) the Commission had amended similar licence conditions relating to the Auckland casino to provide itself with the same approval powers formerly exercised by the Authority.
16. The Commission noted that the Secretary had no objections to the proposal to construct the two smoking areas. In respect of section 139(2) criteria, it was noted in particular that the construction of the smoking areas:
 - (a) was unlikely to lead to any increased risk of unauthorised access by underage persons; and
 - (b) would not give rise to an increase in opportunities for casino gambling as the areas were outside the gambling area.

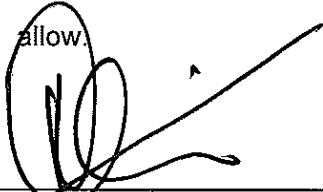
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Decision of Commission

17. The Commission determined that there were no affected persons and was satisfied that the proposal was consistent with section 139(2) criteria. It decided unanimously to amend conditions 1 and 2 of the applicants' casino venue licence to substitute "Commission" for "Authority", and to approve the changes in the design of the casino premises set out in plans prepared by Warren & Mahoney, numbered A0.01, A1.01, A1.02, A2.01, A3.01 and A3.02 and ventilation drawings 3931412/H001 and 3931412/H002 prepared by Beca Carter Hollings & Ferner Limited.
18. The decision was made on condition that the areas are outside the gambling area, and that the gambling area would not be extended to include the smoking areas in future.

Right of appeal

19. 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

A handwritten signature in black ink, appearing to be 'Peter Chin', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.

Peter Chin
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

2 December 2004