

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

**AND** on an application by **SKYCITY CASINO MANAGEMENT LIMITED** to vary a condition of its casino operator's licence and obtain approval for the installation of ATMs

**AND** on an application by **SKYCITY AUCKLAND LIMITED** to revoke a condition of its casino venue licence

**BEFORE THE GAMBLING COMMISSION**

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

Date of Application: 23 December 2004

Date of Decision: 8 April 2005

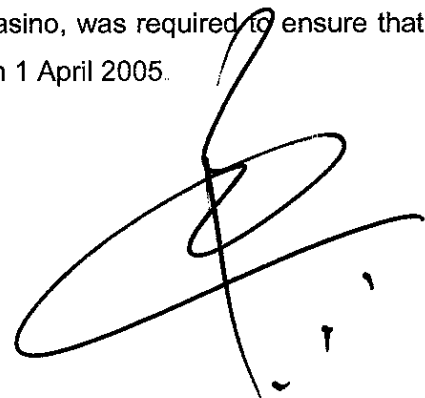
Date of Notification of Decision: 29 April 2005

**DECISION**

**ON AN APPLICATION BY SKYCITY CASINO MANAGEMENT LIMITED TO VARY A CONDITION OF ITS CASINO OPERATOR'S LICENCE AND OBTAIN APPROVAL FOR THE INSTALLATION OF ATMS; AND ON AN APPLICATION BY SKYCITY AUCKLAND LIMITED TO REVOKE A CONDITION OF ITS CASINO VENUE LICENCE**

**Application**

1. Under Regulation 5 of the Gambling (Harm Prevention and Minimisation) Regulations 2004 (the "**Regulations**"), SKYCITY Casino Management Limited ("**SCML**"), the holder of the casino operator's licence for SKYCITY Auckland casino, was required to ensure that there were no ATMs available in the gambling area from 1 April 2005.



2. SCML applied under section 139 of the Gambling Act 2003 (the “**Act**”) to:
- (a) vary condition 4.1 of its casino operator’s licence to provide the Gambling Commission (the “**Commission**”) with the powers formerly exercised by the Casino Control Authority (“**Authority**”); and
  - (b) grant approval for the relocation of 6 of 8 ATMs on the gambling floor to the following locations within the casino premises:
    - (i) 3 to the Level 2 corridor;
    - (ii) 1 to the Level 3 corridor; and
    - (iii) 2 to the ground floor of the casino premises.

The remaining 2 of the 8 ATMs were relocated to carpark lobbies which do not form part of the casino premises and which are not regulated under licence conditions.

3. SKYCITY Auckland Limited (“**SCAL**”) applied under section 139 of the Act to revoke condition 12 of its casino venue licence, on the basis that it duplicated unnecessarily condition 4.1 of SCML’s casino operator’s licence.

#### **Statutory criteria**

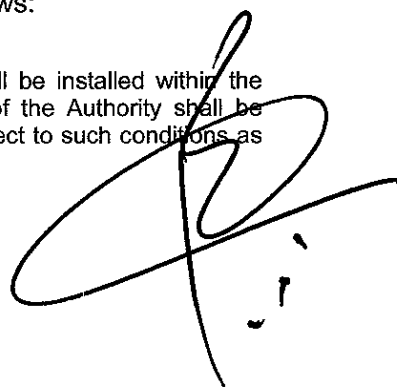
4. Sections 139 and 140 of the Act apply to the proposed variation of condition 4.1 and the revocation of condition 12. The application of these sections is discussed in earlier Commission decisions.
5. Regulation 5 of the Gambling (Harm Prevention Minimisation) Regulations provides as follows:

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

The holder of a class 4 venue licence or a 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.

6. The Regulation came into force on 1 April 2005.
7. Condition 4.1 of SCML’s operator’s licence provides as follows:

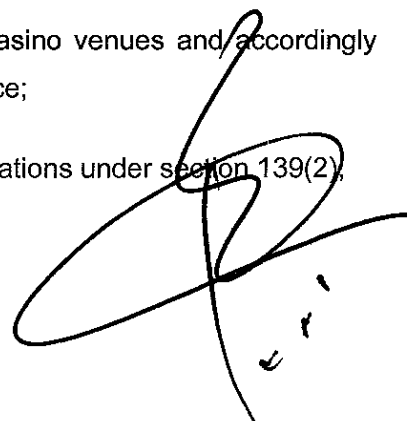
No automatic teller machine (ATM) or any like device shall be installed within the casino unless approved by the Authority. The approval of the Authority shall be revocable in the discretion of the Authority and may be subject to such conditions as the Authority from time to time imposes.



8. Condition I2 of SCAL's venue licence is identical.

**Submissions by the applicant**

9. As an initial matter, SCML questioned whether it was necessary for the Commission to approve the relocation of ATMs, as SCML was moving the ATMs from one approved location to another, and there was no increase in overall ATM numbers.
10. SCML submitted that the variation of condition 4.1 was unnecessary (notwithstanding the Commission's previous rulings) and applied for a variation on a "without prejudice" basis. In support of the variation, SCML submitted:
- (a) this would enable the Commission to continue to provide regulatory oversight of the installation of ATMs and like devices within the casino;
  - (b) it was questionable whether this regulatory oversight was necessary following the introduction of the Regulations;
  - (c) if the Commission did not want to continue previous arrangements, it was able to initiate its own variation or revocation as the case may be to reflect its own particular requirements;
  - (d) the proposed variation did not permit an increase in the opportunities for casino gambling;
  - (e) no-one was affected by the proposal.
11. In support of approval of the relocation of the ATMs, SCML submitted that:
- (a) overall numbers of ATMs would not increase;
  - (b) the Commission should approve general location parameters, eg Level 2 corridor, to enable the applicant to adjust the location of the ATMs.
12. In relation to the revocation of condition I2, SCAL submitted:
- (a) the obligation condition I2 carries is also in the casino operator's licence issued to SCML. There is no reason for the condition to be in both licences;
  - (b) the Regulations impose restrictions on ATMs in casino venues and accordingly licence obligations should be in the operator's licence;
  - (c) the revocation of the licence condition has no implications under section 139(2).

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- (d) no-one was affected by the revocation proposal.

### Submissions by the Secretary

13. The Secretary submitted as follows:

The Secretary makes the general comment that the Gambling Commission may wish to consider whether, in the light of Regulation 5 of the Gambling (Harm Prevention and Minimisation) Regulations, it is appropriate for the Commission to continue to have a role in determining the location of ATMs within casino premises.

Should the Gambling Commission conclude that it should continue to have a role in determining the location of ATMs, the Secretary wonders if the revocation of condition 12 may allow the premises licensee to install ATMs on the casino premises without the approval of the Gambling Commission. The likelihood of such an event occurring is considered slight. The Secretary considers this is a legal matter for the Gambling Commission to determine.

The Secretary notes that SCML is seeking further approvals under condition 4.1, if necessary, for the relocation of ATMs from the gambling area to other areas in the casino. SCML has indicated a preference for the approval of general rather than fixed ATM positions. The Secretary notes that this proposal does not breach the Gambling Act or the Gambling (Harm Prevention and Minimisation) Regulations.

In relation to the final application, the Secretary has no objection to the proposed variation of condition 4.1 replacing the 'Authority' with the 'Gambling Commission'.

14. In reply, SCML proposed that condition 4.1 be amended to put the onus on the operator to ensure compliance, as follows:

The licence holder must ensure that there are no automatic teller machines or like devices available within the casino unless approved by the Authority or Gambling Commission. The approval of the Authority or Gambling Commission shall be revocable in the discretion of the Gambling Commission and may be subject to such conditions as the Gambling Commission from time to time imposes.

### Inquiry by the Commission

15. The Commission gave preliminary consideration to the application at its 11 February and 9 March 2005 meetings. The Commission concluded at its 9 March 2005 meeting that the application raised broader issues relating to its policy on cash access in casino licence conditions, and that it was appropriate for it to seek submissions on the proposal, and the Commission's future regulatory role, from interested parties. The Commission noted that it had not previously considered what its policy should be, especially in light of recent Regulations bearing on the issue. The Commission also undertook a site visit, to see the proposed ATM locations, on 8 April 2003.
16. The Commission consulted with the applicant, the Department of Internal Affairs ("DIA"), Ministry of Health ("MoH"), the Problem Gambling Foundation ("PGF") and the Gambling Helpline ("GH"). Consultation centred on whether, and to what extent, interested parties considered it necessary for the Commission to regulate cash access in licence conditions

with the entry into force of Regulation 5. The submissions received are summarised below.

#### **SKYCITY Casino Management Limited**

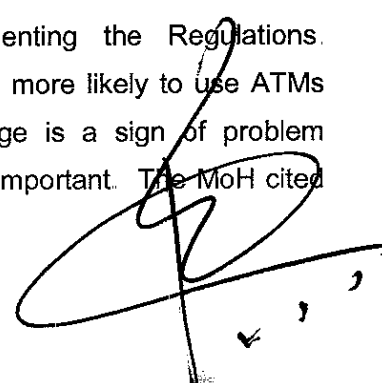
17. SCML submitted that cash access in casinos should be controlled through the Regulations alone and that these should be given a chance to work, rather than “different regulating bodies being involved on an ad hoc basis”. SCML submitted that there was no research which concluded that limiting cash access reduced problem gambling. It emphasised that the Auckland casino encompassed a range of non-gambling entertainment options, and that ready cash access was expected by customers. It submitted that maintaining cash access conditions based on the number and location of all forms of cash outlet would lead to anomalies between casinos, given that in some cases (including Auckland) the casino premises encompasses a wide area beyond the gambling area.

#### **Department of Internal Affairs**

18. The DIA stated that an underlying intent of Regulation 5 was to require problem gamblers to leave the gambling area to get more cash, prompting them to consider whether to continue playing. EFTPOS restrictions were not considered as part of the Regulations, as such controls were not seen to be within the ambit of the empowering clause. EFTPOS access was also viewed as potentially less harmful.
19. The DIA did not in the foreseeable future intend to place controls on cash devices additional to those provided in the Regulations. It noted that the Act provides the Commission with powers to impose controls via licence conditions that supplement and/or support the harm prevention and minimisation objectives of the Act and Regulations. The DIA noted that Schedule 1 of the Act anticipates licence conditions of this nature.
20. The DIA would be concerned if casino operators were able to place an uncontrolled number of ATMs at the points of access to the gambling area on the basis that this “could be seen as an attempt to circumvent the restriction contained in Regulation 5 rather than providing a service to the casino’s non-gambling patrons”.

#### **Ministry of Health**

21. The MoH submitted that problem gambling is influenced by access to cash and that the Commission should maintain licence conditions supplementing the Regulations. Research cited by the MoH shows that problem gamblers are more likely to use ATMs than non-problem gamblers; that repeat or high value usage is a sign of problem gambling; and that proximity of ATMs to the gambling area is important. The MoH cited

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surveys undertaken of problem gamblers indicating that the removal of ATMs from casino venues may contribute to harm minimisation. While location requirements were recommended in some Australian research to ensure cash facilities were a minimum distance from gambling areas, research to establish the recommended distances had not yet been undertaken.

### **Problem Gambling Foundation**

22. The PGF submitted that the 8 ATMs in question and the 3 ATMs already situated in the corridors outside the gaming floors on Levels 2 and 3 should be removed from the casino building. In the alternative, PGF submitted that ATMs should not be located on floors where gambling occurred and that a maximum of three ATMs should be permitted at the ground floor entrance to the building. This would provide an opportunity for gamblers to break the gambling cycle for a long period, while they travelled to a different floor (nearer the exit) to an ATM. The PGF submitted that there was reasonable evidence (cited in the submission) that removal of ATMs will reduce gambling harm. Therefore a precautionary approach should be adopted.

### **Gambling Helpline**

23. GH submitted that casino licence conditions regulating cash access should continue, recognising that problem gambling is influenced by access to cash. GH noted that interruptions to play were critical, and placement of ATMs so gaming machines and tables are out of the player's line of sight when withdrawing cash was an important inhibitor. GH did not have evidence that ATMs situated in other parts of the premises needed special control. GH submitted that cash dispensing facilities should be monitored throughout the premises, and staff trained to pick up potential signs of problems (eg repeated and/or high value usage of ATMs/EFTPOS).

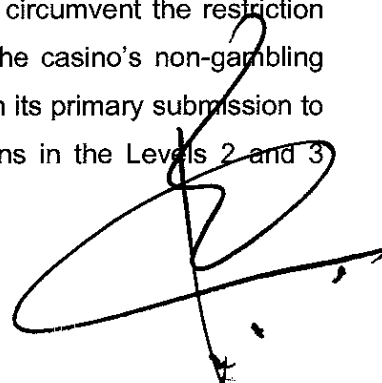
### **Analysis**

24. On the preliminary matter raised by SCML, the Commission confirms that its approval for the relocation of the ATMs pursuant to conditions 4.1 and I2 was required. The applicant was bound by the approvals granted by the Authority, as set out in the Authority's October 2003 Schedule. The Schedule specifies the number and location of ATMs and EFTPOS terminals (and whether or not they can dispense cash). Because the Authority's approval is specific about both the number and location of ATMs, it cannot be as SCML proposed, namely that the locational description was of no application, with the effect that SCML was permitted to locate the total number of ATMs, namely 12, wherever it chose.
25. The Commission has provided guidance to licence holders in its decision GC09/05 on how to proceed in circumstances where it believes that an application ~~may~~ not be

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required. The licence holder should in its application make submissions on the matter, and if it agrees, the Commission will so rule. It is not open to an applicant to ignore a decision of the Commission if the Commission determines an application is necessary, and determines the application. Equally, having applied, a licence holder ought not to proceed on the basis that approval is unnecessary before the issue of the need for an application is resolved, as it did in this instance.

26. The Commission considered the policy it ought to adopt in relation to ATMs and cash dispensing devices having regard to the Regulations and the submissions received by it from the applicant, key government departments, and problem gambling service providers. MoH, PGF and GH supported the Commission's continuing involvement in the regulation of cash access following the passage of Regulations, with the DIA recognising that the Commission had a complimentary role to play. The DIA also advised that there will be no new regulations controlling cash access in the intermediate term. Only the applicant considered that Regulations alone were adequate to achieve harm minimisation objectives, and that licence conditions were unnecessary.
27. The Commission is called on to strike a balance which enables the operator to meet the customer service expectations of gambling and non-gambling patrons, while protecting potentially at risk gambling patrons. The Commission decided to continue to regulate the number of ATMs and EFTPOS devices throughout the casino but not the location of the ATMs for the time being. In reaching this decision the Commission considered the research upon which the submissions were based to be equivocal in some respects. Research was cited establishing that interruptions to gaming machine play (eg to obtain money) contributed to harm minimisation; that problem gamblers tend to use ATMs more frequently than recreational players; and that repeated or high value usage of ATMs may be a sign of a problem. There was, however, an apparent lack of research establishing a direct linkage between reduction in ATMs and cash access opportunities, and the incidence of problem gambling. Reference was made by the MoH and PGF to empirical studies indicating that problem gamblers support the removal of ATMs from casino premises, but in Australia this apparently has not been concluded to be an adequate basis to support the complete removal of ATMs.
28. In terms of location, the DIA indicated that it would be concerned if casino operators were able to place an uncontrolled number of ATMs at the points of access to the gambling area. It considered that this "could be seen as an attempt to circumvent the restriction contained in Regulation 5 rather than providing a service to the casino's non-gambling patrons". At the same time, the Secretary raised no objection in its primary submission to the proposal to relocate the 6 ATMs to the proposed locations in the Levels 2 and 3



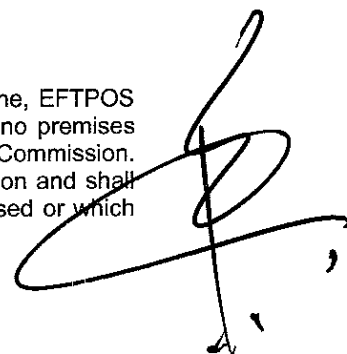
corridors and the ground floor, and on this basis, the Commission assumed that the “trigger point” identified by the DIA had not been reached.

29. The Commission noted submissions that face-to-face contact when making cash withdrawals provided an opportunity for cashiers to identify potential at risk behaviours. It was also interested in the submission made by GH that all cash dispensing facilities – EFTPOS and ATMs - should be monitored, and staff trained to pick up potential signs of problems (eg repeated and/or high value usage). In this regard, SKYCITY indicated that it had initiated a trial programme at the casino in Adelaide, involving roaming casino personnel trained in identifying potential signs of problems. The Commission considered that this might be appropriate at SKYCITY Auckland, and requests that the applicant implement such a system and report on its efficacy in due course.
30. The Commission was not persuaded that it ought to cease regulating cash access entirely through conditions and, in relation to ATMs decided to cap the number. It decided that a maximum of 10 ATMs may be located throughout the casino premises in such locations as the operator may determine subject to Regulation 5. The Commission may, however, resume locational control of ATMs if proximity to or visibility from the gambling area later appears to have a negative effect on the incidence of problem gambling behaviours.
31. The Secretary queried whether the revocation of condition I2 may allow the premises licensee to install ATMs on the casino premises without the approval of the Commission. The applicant has proposed how this concern might be addressed in an amended condition, and the Commission agrees. This is reflected in the wording for condition 4.1 set out below.
32. In the course of dealing with the application the Commission became aware of potential uncertainty about whether EFTPOS devices were “like devices” under the licence conditions, and has taken this opportunity to clarify the matter in the redrafted condition 4.1.

#### **Decision**

33. The Commission considered that the applications were consistent with section 139(2) criteria. It resolved unanimously to:
  - (a) amend condition 4.1 to read as follows:



The licence holder shall ensure that no automatic teller machine, EFTPOS facility or device of a similar nature is installed within the casino premises unless approved by the Authority (prior to 1 July 2004) or the Commission. Approvals shall be revocable at the discretion of the Commission and shall be subject to such conditions as the Authority may have imposed or which may be imposed by the Commission from time to time.



- (b) approve the relocation of six ATMs from the gambling floor to positions elsewhere in the casino premises;
- (c) approve a maximum number of 10 ATMs throughout the casino premises; and
- (d) revoke condition I2 of SCAL's operator's licence.

**Right of appeal**

34. 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 the High Court may allow.



**Peter Chin**  
Chief Gambling Commissioner

for and on behalf of the  
Gambling Commission

29 April 2005