

IN THE MATTER of the Gambling Act 2003

AND on an application by
SKYCITY HAMILTON LIMITED to vary conditions of its venue licence and for approvals to construct a new office and revise the gambling area floor layout

BEFORE THE GAMBLING COMMISSION

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

Date of Application: 23 February 2005

Date of Decision: 8 April 2005

Date of Notification of Decision: **26** April 2005

DECISION

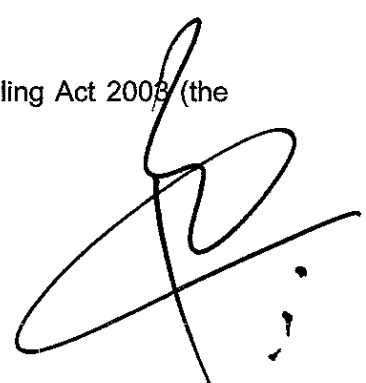
**ON AN APPLICATION BY SKYCITY HAMILTON LIMITED
TO VARY CONDITIONS OF ITS VENUE LICENCE AND FOR APPROVALS
TO CONSTRUCT A NEW OFFICE
AND REVISE THE GAMBLING AREA FLOOR LAYOUT**

Application

1. SKYCITY Hamilton Limited (the "**Applicant**") applied to the Gambling Commission (the "**Commission**");
 - (a) to vary conditions 5.1 and 6.2 of its venue licence, by substituting "Gambling Commission" for "Authority";
 - (b) for approvals under the varied licence conditions for the construction of a new office and revised floor layouts.

Statutory criteria

2. The application was made pursuant to section 139(1)(d) of the Gambling Act 2003 (the "**Act**"). Sections 139 and 140 apply.



3. Conditions 5.1, 6.1 and 6.2 of the venue licence provide as follows:

5. Design, construction, fitout and operation

Casino to be designed, constructed, fitted out and operated in accordance with application

5.1 Subject to the conditions of this licence, the licence holder shall ensure that the casino is designed, developed, constructed, fitted out, commissioned for operation and operated generally in accordance with the licence holder's application as submitted to the Authority, subject to such changes as the Authority may from time to time approve or require in writing

6. Security and surveillance specifications

Approval of specifications for security and surveillance installations

6.1 Subject to paragraph 6.2, the licence holder shall submit to the Authority for approval all drawings and specifications relating to:

- (a) gaming area floor layouts showing gaming tables, gaming machines and close circuit television cameras;
- (b) any viewing panels;
- (c) cashier cages, count rooms, security areas and access thereto;
- (d) areas for government inspectors and surveillance staff;
- (e) electrical installations, telephone installations, auxiliary power; and
- (f) the master key system or access control system.

Availability of drawings of security, surveillance and alarm systems

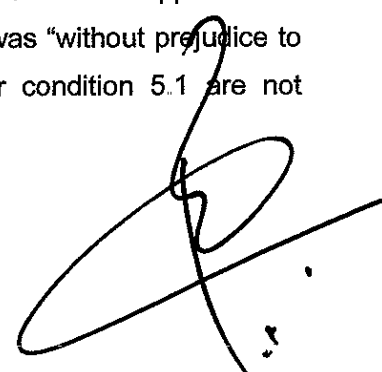
6.2 The licence holder shall not be obliged to submit to the Authority for approval working drawings relating to the installation of the security, surveillance and alarm systems, but shall be required to:

- (a) provide to the Authority particulars of such systems to demonstrate how they operate, that they are adequate for the purposes intended, and that they are to a standard as directed by the Authority;
- (b) maintain a current set of working drawings of such systems and make them available on request to any authorised officer designated by the Authority.

Submissions by the Applicant

Construction changes

4. In its covering letter, the Applicant stated that it "does not believe that the construction of a new office requires the Commission's approval under condition 5.1". The Applicant did not state why, but submitted the application on the basis that it was "without prejudice to our position that a variation application and/or consent under condition 5.1 are not necessary".

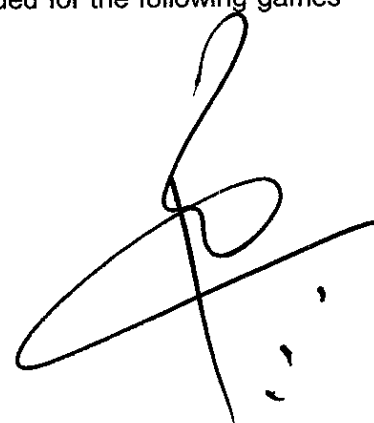


5. The changes which the Applicant proposed making were shown on a plan marked "A" attached to the application. The changes involve constructing new office space (outside the gambling area) and stairs leading from the gambling area to the office space.
6. The Applicant advised that the construction work and relocation would be staged, and was expected to take 17 weeks, including a lead-time of four weeks following floor plan approval. There would be interim changes to the location of gaming machines during this time. The Applicant advised that the Inspectorate would be notified when construction begins, and of all changes to the existing floor plan as and when those changes occur.

Floor plans

7. The Applicant applied on a "without prejudice" basis to vary condition 6.1 (and as a consequence 6.2) to substitute "Commission" for "Authority", and for approvals for revised floor layouts and CCTV plans. The application to vary conditions 6.1 and 6.2 was "without prejudice" because the Applicant considers that licence conditions do not need to be amended for the Commission to assume powers formerly exercised by the Casino Control Authority (the "Authority").
8. The last floor plan approved by the Authority was attached to the application marked "B". The Applicant noted that there have been two changes to that plan since it was approved by the Authority, involving the relocation of six gaming machines, and a minor rearrangement of tables and to two pits. The Applicant explained that those changes were inadvertently submitted to the Department of Internal Affairs for approval and "approved" in August 2004.
9. Current proposals involve the reconfiguration of the gaming machines in order to "improve aesthetics" and make the smoking deck more accessible. The Applicant submitted that the current proposals did not involve any changes to the existing number of gaming machines (339) or gaming tables (23), or to the types of gaming tables or to the player spaces at those tables. The Applicant submitted that there were no congestion issues or bottlenecks created by the current floor configuration which it sought to address through the proposed changes.
10. The floor plans for which the Applicant sought approval provided for the following games to be played, interchangeably, on the tables depicted:

Black Jack:	up to 11 games
Roulette:	up to 5 games
Midi Baccarat:	up to 3 games
Caribbean Stud Poker:	up to 2 games
Tai Sai:	up to 1 game
Mini Baccarat:	up to 1 game



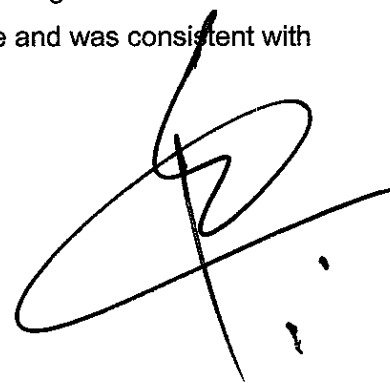
11. The Applicant advised that there have been changes to its game mix since the entry into force of sections 11 and 12 of the Act. A Money Wheel had been replaced with a Black Jack table. The Applicant noted that the Commission had previously identified that Black Jack was a faster game, but had also accepted that a Black Jack table accommodated three less player spaces.
12. The Applicant submitted that increased speed/rates of play does not, as a matter of legal interpretation or in fact, constitute an increase in the opportunities for casino gambling and that it is impractical to draw comparisons between games, given the variables involved. Without resiling from this view, it submitted that any increase in rate of play would, in this instance, be offset by the reduced number of player spaces associated with Black Jack.

CCTV layouts

13. The Applicant noted that, as a consequence to the changes proposed to the layout of the gambling floor, there would need to be minor changes to the CCTV layout requiring approval. The Applicant proposed that there would be only one fixed camera over the games of Roulette and Tai Sai, and submitted that this was adequate and consistent with the Authority's Surveillance Policy.
14. The Applicant noted that in decisions GC01/05 and GC02/05 the Commission required that the Roulette and Tai Sai tables in Queenstown and Auckland to be monitored by a minimum of two fixed cameras (in order to monitor both the equipment and the layout). The Applicant submitted that this was unnecessary in Hamilton, and that one fixed camera was adequate for monitoring roulette tables there. The Applicant noted that the Tai Sai game at Hamilton is single rather than double-sided (as in Auckland) and that again, one fixed camera was adequate.

Submissions by the Secretary

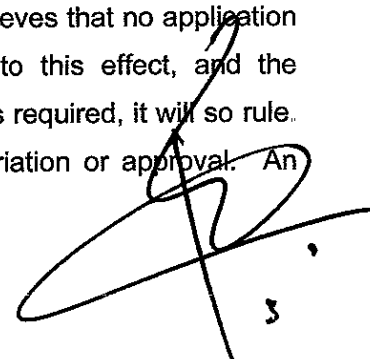
15. The Secretary had no concerns with the proposed variation of conditions 5.1, 6.1 and 6.2. The Secretary considered the timeline (17 weeks) to implement the construction layout changes was reasonable and noted that the Applicant had undertaken to notify the local inspectorate of the changes to the floor plan as they occur.
16. The Secretary did not object to the proposed CCTV layout and agreed that one fixed camera for each of the Roulette and Tai Sai tables was adequate and was consistent with the Authority's Surveillance Policy.

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17. In respect of rates of play for different games, the Secretary considered that it was impractical accurately to assign a speed to each individual game type because of the large number of different variables impacting upon game speed.

Analysis

18. Three separate aspects of the application were advanced on a “without prejudice” basis:
- (a) the application under condition 5.1 for approval of the construction changes;
 - (b) the application to vary conditions 5.1, 6.1 and 6.2; and
 - (c) submissions made on rates of play.
19. The Commission wishes to clarify for the future the circumstances in which it is appropriate for applicants to make “without prejudice” applications.
20. In circumstances where the Commission’s ruling on a matter is under challenge, it is acceptable (although possibly unnecessary) to indicate that an application made in the interim (or a submission made in an application) is without prejudice, in order to make clear that the applicant is not resiling from its challenge. The comment made by the Applicant about the relevance of increased speed/rates of play under section 12 comes into this category.
21. The Applicant is using “without prejudice” in two other circumstances where this usage is not acceptable. The first of these is to indicate ongoing disagreement with a Commission ruling which is not subject to challenge. For example, the Applicant in its submissions invoked the “necessary implication” argument in relation to the need for the Commission to vary licence conditions in order for it to assume powers formerly exercised by the Authority. The arguments of the Applicant on this point have been heard and rejected, and no new argument is being advanced in the context of the application. The Applicant is simply discourteously registering its dissatisfaction with an earlier decision, and that is not appropriate.
22. The second circumstance is where an applicant submits an application on a without prejudice basis because it considers that approval is not required. In this application, the Applicant considered, for example, that it did not need approval for construction changes under condition 5.1. The Commission does not find this usage acceptable and considers it to be of dubious affect. For future guidance, if an applicant believes that no application is required, it should make submissions to the Commission to this effect, and the Commission will consider these. If it agrees that no application is required, it will so rule. If it does not, it will proceed to consider the application for variation or approval. An



avenue which is not open to the applicant is for it to subsequently ignore a decision of the Commission if the Commission determines an application to be necessary, and decides the application. The fact that the application was submitted on a without prejudice basis is of no effect.

23. In respect of the present proposal, the Commission noted that no objections were raised by the Secretary, and that the Secretary accepted the proposed surveillance and security arrangements, including the use of one fixed camera to monitor the roulette and Tai Sai tables.
24. On floor plans, the Applicant proposed the same "blank box" approach to tables adopted for Auckland and Queenstown. The Commission was agreeable to this approach, subject to the application of the same restrictions on the introduction of electronic versions, aids and enhancements and requirement for notice of changes included in decisions GC01/05 and GC02/05. The Commission determined that the proposal did not give rise to any increase in opportunities for casino gambling.

Decision of the Commission

25. The Commission was satisfied that the proposal was consistent with section 139(2) criteria and resolved unanimously that:
- (a) there were no parties affected by the application;
- (b) to vary conditions 5.1, 6.1 and 6.2, as follows:

5. Design, construction, fitout and operation

Casino to be designed, constructed, fitted out and operated in accordance with application

- 5.1 Subject to the conditions of this licence, the licence holder shall ensure that the casino is designed, developed, constructed, fitted out, commissioned for operation and operated generally in accordance with the licence holder's application as submitted to the Authority, subject to such changes as the Authority has approved or which the Commission may approve from time to time or require in writing.

6. Security and surveillance specifications

Approval of specifications for security and surveillance installations

- 6.1 Subject to paragraph 6.2, the licence holder shall submit to the Commission for approval all drawings and specifications relating to:
- (a) gambling area floor layouts showing gaming tables, gaming machines and close circuit television cameras;
- (b) any viewing panels;

- (c) cashier cages, count rooms, security areas and access thereto;
- (d) areas for government inspectors and surveillance staff;
- (e) electrical installations, telephone installations, auxiliary power; and
- (f) the master key system or access control system.

Availability of drawings of security, surveillance and alarm systems

6.2 The licence holder shall not be obliged to submit to the Commission for approval working drawings relating to the installation of the security, surveillance and alarm systems, but shall be required to:

- (a) provide to the Commission particulars of such systems to demonstrate how they operate, that they are adequate for the purposes intended, and that they are to a standard as directed by the Commission;
 - (b) maintain a current set of working drawings of such systems and make them available on request to any authorised officer designated by the Commission.
- (c) pursuant to condition 5.1 (as amended) to approve the construction changes shown in Plan A attached to the application;
 - (d) pursuant to condition 6.1(a) (as amended) to approve the gambling floor layouts showing gaming tables and gaming machines shown in Attachment 1 attached to this decision and subject to the following requirements:
 - (i) the licence holder may operate on the 23 tables shown in Attachment 1 the following games:

Black Jack – up to 11 games;

Roulette – up to 5 games;

Midi Baccarat – up to 3 games;

Caribbean Stud Poker – up to 2 games;

Tai Sai – up to 1 game;

Mini Baccarat – up to 1 game.

The foregoing list refers to manual versions of the games specified, and does not extend to or permit the introduction of any electronic version or new electronic aids or enhancements. If electronic versions, aids or enhancements are sought to be introduced, an application is required by the licence holder for approval of a revised floor layout;

- (ii) the licence holder must lodge with the local Inspectorate a plan showing the current configuration of the table games, identifying the game played at each table, and ensure that the lodged plan is maintained up to date;
- (e) pursuant to condition 6.1(a) (as amended) to approve the CCTV layouts shown in Attachment 2 to the application.

Right of appeal

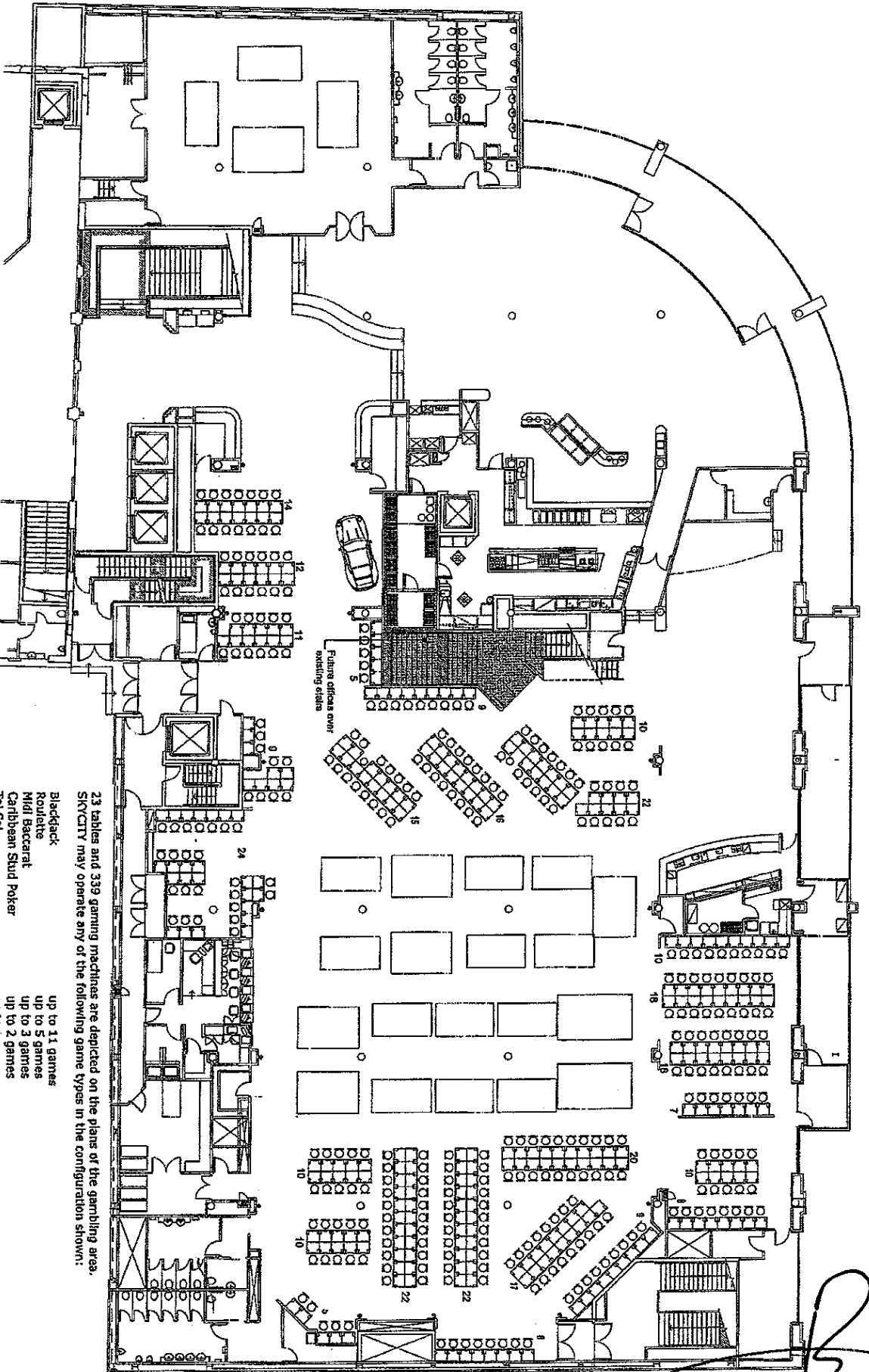
26. Pursuant to section 235 of the Act, a person affected by this decision may appeal that decision to the High Court. An appeal must be made within 15 working days of the date of notice of the Commission's decision or any longer period the High Court may allow.



Peter Chin
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

26 April 2005



23 tables and 339 gaming machines are depicted on the plans of the gambling area. SKYCITY may operate any of the following game types in the configuration shown:

- Blackjack
 - Roulette
 - Midi Baccarat
 - Caribbean Stud Poker
 - Tai Sai
 - Mini Baccarat
- up to 11 games
 - up to 5 games
 - up to 3 games
 - up to 2 games
 - up to 1 game

NO.	DESCRIPTION	DATE	APPROVED BY	REVISION	DATE	APPROVED BY	REVISION	DATE	APPROVED BY	REVISION

CONTRACTOR NAME: SEKTA CONTRACT NO.: 1100 @ A1 - 1200 @ A3	SHEET NO.: 1100 @ A1 - 1200 @ A3 SHEET TITLE: SKYCITY CASINO GAMING FLOOR
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