

IN THE MATTER of the Gambling Act 2003
AND of an application by
SKYCITY AUCKLAND LIMITED for the
construction of new
facilities for the VIP
Members' Room

BEFORE THE GAMBLING COMMISSION

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

Date of Application: 3 September 2004 (filed 6 September 2004)

Date of Decision: 22 October 2004

Date of Notification of Decision: 19 November 2004

DECISION

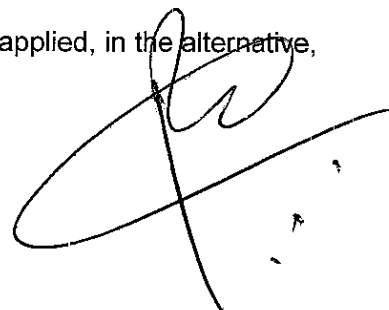
**ON APPLICATION BY SKY CITY AUCKLAND LIMITED FOR THE
CONSTRUCTION OF NEW FACILITIES FOR THE VIP MEMBERS' ROOM**

Introduction

1. SKYCITY Auckland Limited (the "**applicant**") applied to the Gambling Commission (the "**Commission**") on 3 September 2004 for:
 - (a) approval under Condition B1 of its casino venue licence for the proposed security and surveillance installations in the VIP Members' Room; and
 - (b) approval under Condition B5 of its casino venue licence for a non-complying cashiering facility to be located in the VIP Members' Room.

The applicant submitted that the Commission had the power to grant the approvals sought under the Gambling Act 2003 (the "**Act**") by reading "Commission" for "Authority" in Conditions B1 and B5.

2. If the Commission did not accept this submission, the applicant applied, in the alternative, under section 139 of the Act for the Commission to:



- (a) amend Conditions B1 and B5 to substitute "Commission" for "Authority" and then grant the approvals sought; or
- (b) specify new conditions. As proposed by the applicant, a new Condition B1a would approve the gambling floor layout for the VIP Members' Room and the placement of CCTV cameras in accordance with the plans submitted, and provide for any alterations to those plans to be notified to the Commission. A new Condition B5a would approve the cashiering facility proposed for the VIP Members' Room.

Key issues

- 3. From an operational perspective, the Secretary advised that the proposed surveillance and security arrangements were adequate and that any risks posed in relation to the proposed cashiering facility were minimal. It followed that the principal issues requiring consideration by the Commission included its role in relation to the application (the applicant submitting that its approval function was "purely technical") and the form in which approvals should be granted. In particular, the Commission considered:
 - (a) the extent to which, if at all, it took over the approval functions of the Authority specified in licence conditions;
 - (b) the ability of the Commission to instigate and use secondary approval processes under licence conditions and the circumstances in which it may elect to do so; and
 - (c) the form of amendments – whether it should amend the relevant licence conditions to replace the references to the Authority with the Commission (and authorise the changes under that amended administrative approval power) or amend the licence terms to approve the specific changes requested.

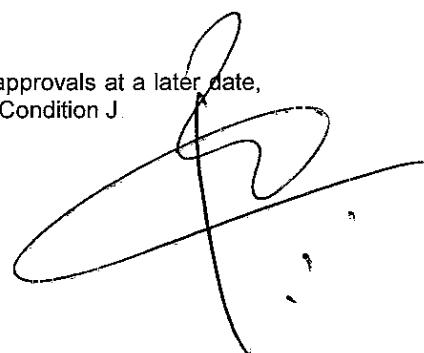
Decision by the Authority

- 4. The Authority advised the applicant, by letter dated 11 December 2003, that:

The Authority agreed on 5 December 2003 to approve, pursuant to Conditions A2 and I1 of SKYCITY Auckland Limited's premises licence, amendments, alterations and extensions to the casino premises that are substantially in accordance with the proposal relating to the new VIP facilities as submitted for approval in the letter dated 20 November 2003.

- 5. The Authority's letter of 11 December further stated that:

We look forward to receiving applications for consequential approvals at a later date, including for the redesignation of the gaming area in terms of Condition J.

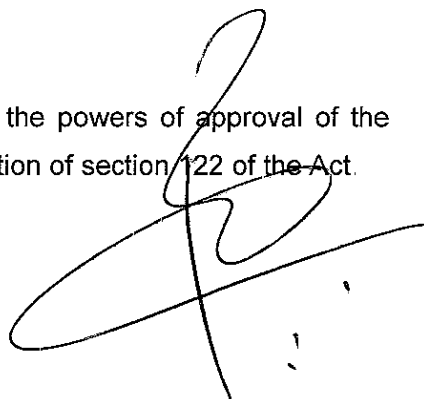
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Licence Conditions

6. Conditions B1 and B5 of the applicant's venue licence are set out in Annexure 1 to this decision.
7. Condition B1 requires that the licence holder submit for approval various arrangements and drawings and specifications relating to security and surveillance installations.
8. In respect of Condition B1 matters, the applicant submitted plans for approval in respect of (a) (c) and (e) (floor layout, security layout, electrical installations). The applicant also specified that there would be:
 - (a) no catwalks or viewing panels;
 - (b) no count rooms or security areas; and
 - (c) a mix of diffuse and direct overhead light sources for table game illumination.
9. Condition B5 of the licence requires the licence holder to maintain at least one principal cashiering facility on each level of the gaming floor which is clearly visible to patrons. Each such cashiering facility has minimum requirements, including:
 - (a) accommodation for chip bank cashiers and general cashiers;
 - (b) storage facilities for cage inventory;
 - (c) a separate locked compartment for storage of chips and plaques held in reserve;
 - (d) manually triggered and automatic silent alarm systems; and
 - (e) interconnect door entry and exist system (ie a man trap).
10. Condition B5 contemplates that the applicant may also maintain additional cashiering facilities in other parts of the gaming floor to service dedicated areas or rooms but where these additional facilities do not meet the minimum requirements for the principal facilities, specifies that the approval of the Authority is required. Approval was required under Condition B5 for the proposed cashiering facility because it would not have a chip bank or man trap.

Statutory criteria

11. The determination of whether the Commission assumes the powers of approval of the Authority under licence conditions hinges on the interpretation of section 122 of the Act.

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12 Section 122 provides:

122 Existing casino licences and agreements

- (1) An existing casino operator's licence becomes, and must be treated as if it were, a casino operator's licence granted under section 130
- (2) An existing casino premises licence becomes, and must be treated as if it were, a casino venue licence.
- (3) An existing casino venue agreement licence becomes, and must be treated as if it were, a casino venue agreement approved under section 133

13 Sections 139 and 140 of the Act apply to applications to specify, revoke or amend casino licence conditions. These sections are set out and discussed in detail in earlier decisions by the Commission.

14. In particular, section 139(2) of the Act requires 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 applicant

15. The applicant submitted that the application related to "outstanding matters of a technical nature that are ancillary, or consequential, to the substantive VIP proposal". The fact that the VIP Members' Room proposal had been approved by the Authority, it was submitted, affected the procedure to be adopted by the Commission.

16. The applicant lodged with its application a legal submission by counsel for SKYCITY on the powers of the Commission to grant the approvals sought. That submission is summarised in the applicant's letter of 3 September 2004 as follows:

A common sense and "purposive" approach dictates that in existing licence conditions the "Authority" should now be read as the "Commission". Otherwise the savings provision in section 122 of the Gambling Act would be in part negated. Second that the Commission has the power to stipulate conditions containing administrative approval powers meaning that if the Commission were to accept that references to the "Authority" should now be deemed to be references to the "Commission", there is nothing inconsistent with the 2003 Act in that approach. And finally, whether the matter is dealt with as an application for administrative approvals under the existing conditions B1 and B5 (as SKYCITY submits it should be), or as a variation of

conditions under sections 139 and 140, the fact that the VIP proposal has already been approved by the Authority does affect the procedure to be adopted.

17. In relation to the cashiering facility, the applicant submitted that there was no need for the dedicated chip bank and interconnect door entry and exit system prescribed in Condition B5. The application stated that:

There is no justification for a dedicated chip bank when the new facility can be adequately serviced via either of the principal facilities without any undue risk arising from the movement of chips. This is consistent with current arrangements for servicing the existing Members' Room.

In our submission, an interconnect door entry and exit system in this facility would not offer any tangible benefits and for that reason is not considered necessary. A man trap facility is traditionally associated with the primary cashiering area which also houses the soft count room. Given the large quantity of cash held within this area, the man trap facility is seen by some as an important additional security safeguard. However dedicated satellite cashiering facilities servicing specific areas of the casino are not subject to the same level of risk and traditionally have a more open design which would mean a man trap facility would serve no purpose.

18. Regarding surveillance and security, the applicant advised that the CCTV layout was designed in accordance with established industry practices and regulatory standards set out in the Authority's surveillance policy, and that the surveillance technology is at the same level as that adopted in the most recent gaming facility.

Submissions by Secretary

19. The Department stated in its letter dated 6 October that:

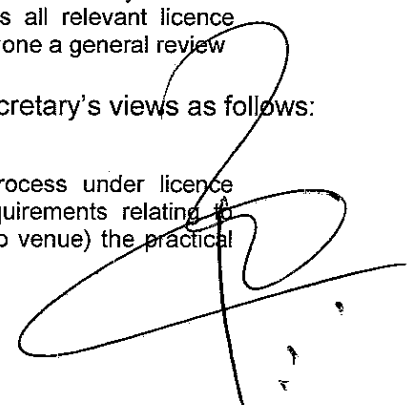
The Secretary has no objection to the substance of SKYCITY's application for the approval of new facilities for VIP members as outlined in Appendix 1 to the cover letter dated 3 September 2004. . . . Whilst neither facility [*ie the VIP cashiering facility and the cashiering facility in the VIP Gambling Machine enclosure*] will have a chip bank or an interconnect door entry and exit system ('man trap'), the local Inspectorate has considered the reasons put forward by SKYCITY, viewed the physical locations and determined that any risks posed are indeed minimal.

20. In relation to the form in which approvals should be granted, the Secretary expressed a preference for varying existing licence conditions to refer to the Commission, rather than specifying new conditions specifically related to the surveillance arrangements and cashiering facility for the VIP Members' Room. The Department stated in its letter of 6 October that:

The Secretary supports SKYCITY's alternative proposal/s in relation to both Auckland applications that the relevant licence conditions (B1, B5 and I5) are varied to refer to the "Gambling Commission" rather than the Authority. However the Secretary does not consider it appropriate for this measure to be applied across all relevant licence conditions, at least until such time as the conditions have undergone a general review.

21. In its letter of 15 October the Department elaborated on the Secretary's views as follows:

Clearly this proposal leaves intact a secondary approval process under licence conditions B5 and I1. In both these situations (general requirements relating to changes to approved facilities in the gaming area of the casino venue) the practical

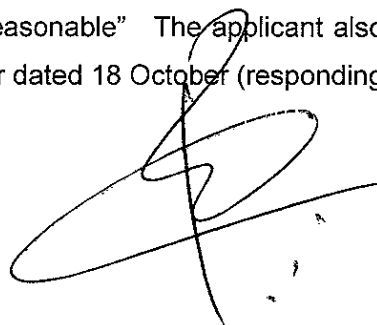


reality is that casinos do from time to time change, relocate, update or modify various facilities within the gambling area. Both the number of such facilities (cage, chip bank, main bank, cashiering stations, storage areas, surveillance installations and facilities, security, hard and soft count rooms, to name the key facilities), and the relative frequency with which they may experience change indicates that a more flexible approach to approvals may be appropriate. To that end the Secretary is comfortable with the secondary administrative approval being retained within licence conditions B5 and I5.

The Commission also invites comment from the Secretary regarding the third alternative formulation from SKYCITY that would entail new, very specific 'fixed' licence conditions. For the reasons noted above, the Secretary is not in favour of this alternative. The over-specification of licence conditions for facilities that could change in the future may prove an onerous (and expensive) administrative apparatus.

Analysis

22. On the preliminary point relating to the Commission's role, the Commission recognised that the applicant reasonably expected approvals to be granted for facilities to be used in the VIP Members' Room (provided these were adequate) at the time the Authority consented to construction. However, for the reasons articulated in its earlier decision relating to the designation of the VIP Members' Room, the Commission determined that its role was not constrained, as the applicant submitted, and that it was necessary and appropriate for the Commission to determine the applications on their face, in accordance with the Act.
23. With confirmation by the Secretary of the adequacy of the surveillance and cashiering arrangements, the primary issue for the Commission was the form in which approvals should be granted.
24. The Commission obtained independent legal advice (circulated for comment to the Secretary and the applicant) on the question of whether it had the power to grant the approvals sought under Conditions B1 and B5, as they stood. The Commission was advised, and accepted, that it is not a "necessary implication" that the Commission should be substituted for the Authority in the licence conditions. The test for "necessary implication" argument was not met as:
 - (a) the purpose of section 122 will not be defeated if the licence conditions are not interpreted as the applicant contended; and
 - (b) the Act provides its own express mechanism (section 139) for addressing any problems arising from the change from the Authority as the regulator.
25. In its letter of 15 October 2004, the Department stated that the Secretary considered the legal advice received by the Commission "sensible and reasonable". The applicant also conceded the point for practical purposes, stating in a letter dated 18 October (responding to the legal advice obtained by the Commission) that:

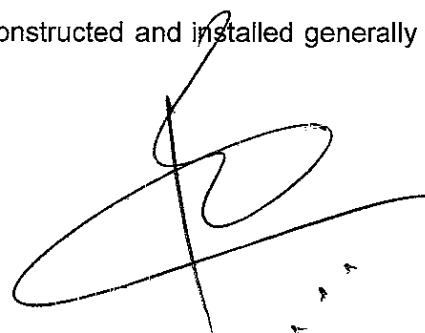


We remain of the view that, as a matter of necessary implication, the word "Commission" should be read as substituted for the "Authority" in the approval powers in the existing licence conditions. However, we note that Wilson Harle agree that the Commission has power to specify licence conditions that include administrative approval powers in appropriate circumstances. As the Commission is progressing a general review of the licence conditions, we see that review as an appropriate forum to resolve some if not all of the transitional issues affecting licence conditions arising from the change in legislation

26. The Commission agreed with the applicant that it can make conditions which contemplate a level of administrative approval, the proviso being that the Commission does not consider its powers to do so to be unconstrained. It would be necessary to ensure on a case by case basis that the statutory processes set out in the Act (which contemplate that the Department and affected parties will have input into variation of licence conditions) are not undermined. In any given instance, the requirement to give primacy to statutory requirements needs to be balanced by the need for the Commission to operate efficiently.
27. In the current circumstances, it was noted by the Commission that, while acknowledging the potential downsides of excessive secondary approvals, neither the Secretary nor the applicant favoured amending the licence conditions to approve the specific changes requested. The material before the Commission also indicated that minor changes may need to be made frequently and formal applications for each would potentially be cumbersome, inefficient or expensive.
28. For these reasons, the Commission resolved to amend Conditions B1 and B5 to substitute "Commission" for "Authority". In due course it is anticipated that the Commission will establish the appropriate scope for secondary approvals (with some general rules surrounding their application) and will in consultation with the licence holder and the Secretary review existing licence conditions including secondary approval processes, and the extent to which these remain appropriate.

Decision

29. The Commission was satisfied that the proposal was consistent with section 139(2) criteria and resolved unanimously to:
 - (a) amend Conditions B1 and B5 to substitute "Commission" for "Authority";
 - (b) grant approval under Condition B1 to the proposed surveillance and security specifications;
 - (c) required that the security and surveillance be constructed and installed generally in accordance with:

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- (i) Drawing A1504, rev 01b dated 15/06/04, showing the gambling area floor layout;
 - (ii) Drawing 3007-SS-FC-001 dated 20/05/04 showing the CCTV layout;
 - (iii) Drawing A1502, Rev 04a dated 14/09/04 showing electrical and telephone installations;
 - (iv) Drawing 3007-SS-FC-002 dated 20/05/04 showing the security layout;
- (d) approved under Condition B5 the proposed cashiering facility for the VIP Members' Room, and required that this be constructed generally in accordance with Drawings A1900 and A1901 rev 01a dated 22/06/04.

Right of appeal

30. 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

allow.



Peter Chin
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

19 November 2004

ANNEXURE 1**B1 Approval of specifications for security and surveillance installations**

The licence holder shall submit to the Authority for approval all drawings and specifications (except as provided in B2) relating to:

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

B5 General specifications for cage/chip bank facilities

The licence holder shall maintain at least one principal cashiering facility on each level of the gaming floor which is clearly visible to patrons. Each such cashiering facility shall as a minimum requirement include the following:

- (a) accommodation for chip bank cashiers and general cashiers (which shall be physically segregated from each other unless the Authority approves otherwise);
- (b) storage facilities for cage inventory;
- (c) a separate locked compartment for storage of chips and plaques held in reserve and not used for active gaming in at least one facility;
- (d) manually triggered and automatic silent alarm systems connected directly to monitor rooms of the security and surveillance departments; and
- (e) interconnect door entry and exit system (man trap) which will not permit a person to pass through the second door until the first door is securely locked.

The licence holder may also maintain additional cashiering facilities in other parts of the gaming floor to service dedicated areas or rooms but where those additional facilities do not meet the minimum requirements for the principal facilities they shall require the approval of the Authority. The approval of the Authority shall be revocable in the discretion of the Authority and shall be subject to such conditions as the Authority from time to time imposes

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