

IN THE MATTER of the Gambling Act 2003
AND of an application by
QUEENSTOWN CASINOS LIMITED relating to a
revised 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: 6 December 2004

Date of Decision: 24 January 2005

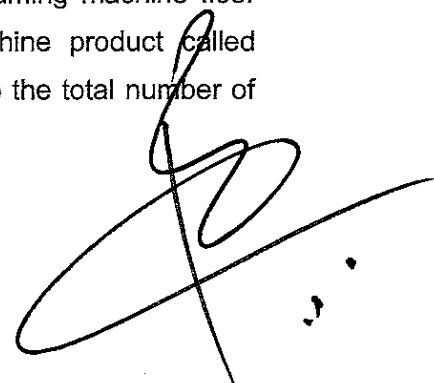
Date of Notification
of Decision: 3 February 2005

DECISION

**ON APPLICATION BY QUEENSTOWN CASINOS LIMITED
RELATING TO A REVISED FLOOR LAYOUT**

Application

1. Queenstown Casinos Limited (the "**applicant**") applied under section 139 of the Gambling Act 2003 (the "**Act**") to:
 - (a) amend conditions 2.1 and 2.2 of its casino venue licence to add references to the Commission, thus providing the Commission with powers to approve changes to the gambling floor layout;
 - (b) approve a revised plan for the floor layout at Queenstown casino.
2. The proposed changes to the floor layout involved relocating one gaming table from the Main Gambling Floor to the Summit Room and redesigning the gaming machine floor layout to accommodate the introduction of a new gaming machine product called "Jetsetter" and its associated signage. No change was proposed to the total number of machines, which remained at 86.



3. The applicant proposed two alternate ways in which approval could be granted by the Commission (Plan A being the preferred alternative):

(a) Plan "A" showed how the tables and machines at the casino were to be configured but did not specify the games to be played on each table. The applicant proposed it should be able to operate the following games, interchangeably, on the 12 tables:

- (i) up to five games of Black Jack;
- (ii) up to three games of Midi Baccarat;
- (iii) up to three games of Roulette; and
- (iv) up to one game of Caribbean Stud Poker.

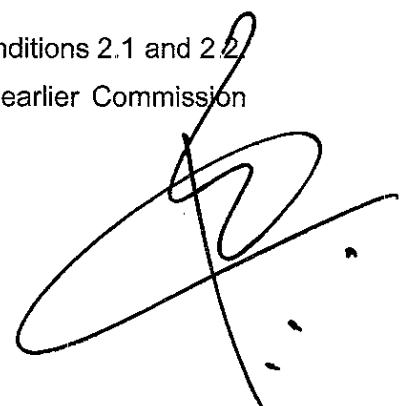
(b) Plan "B" showed the configuration of tables and machines and specified the games to be played on each of the tables. If this plan was approved by the Commission, it was understood that the applicant would need to seek the approval of the Commission if it wished to change the location of specific table games.

4. As a preliminary matter, the applicant queried whether it was necessary for it to obtain approvals from the Commission for the changes. The applicant noted that condition 2.1 referred to approvals being obtained from the Casino Control Authority (the "**Authority**"), which had ceased to exist. On this basis it was suggested that the condition might have no ongoing application.

5. The Commission considered that its approval was required under condition 2.1 before changes could be made to floor layout. It agreed that the licence holder could continue to rely on prior approvals given by the Authority but determined that, if the licence holder wished to depart from the currently approved layout, it required new approvals. Accordingly, the Commission concluded that it needed to be placed (by amendment of conditions 2.1 and 2.2) in a position to grant the approvals sought. On this basis, the Commission considered the application as a proposed variation to licence conditions.

Statutory criteria

6. Sections 139 and 140 of the Act apply to the proposed variation of conditions 2.1 and 2.2. The general application of sections 139 and 140 are discussed in earlier Commission decisions.

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7. Sections 11 and 12 are also important. These provisions have been set out in previous decisions and in the Act.

8. Conditions 2.1 and 2.2 provide as follows:

2.1 Approval of specifications for security and surveillance installations

Subject to paragraph 2.2, 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) cashiering 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.

2.2 Availability of drawings of security, surveillance and alarm systems

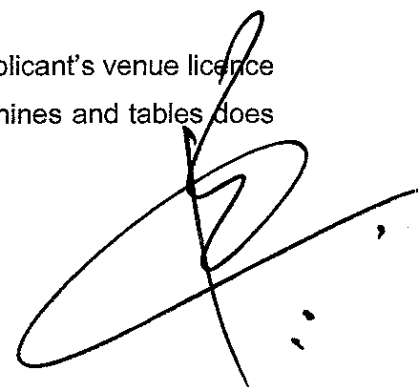
The licence holder shall not be obliged to submit to the Authority for approval working drawings relating to the installation of the security, surveillance and alarm systems, but it shall be required to:

- (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

9. The applicant submitted in its application that:

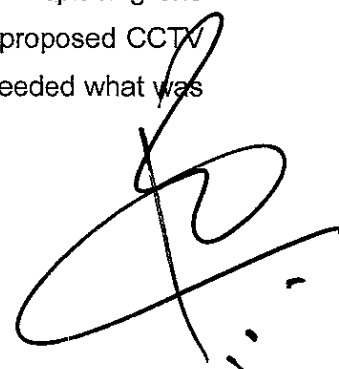
- (a) the proposal involved changing the location of existing games within the confines of the designated gambling area;
- (b) the new floor layout would not permit an increase in the opportunities for casino gambling as there was no increase in the number of tables or machines, or player space;
- (c) the proposal was consistent with condition 1.10(b) of the applicant's venue licence which requires that the number of seats for players at machines and tables does not exceed 170;



- (d) the CCTV layout included fixed and Pan-Tilt-Zoom cameras, and was consistent with established surveillance practices in the SKYCITY group and the regulatory standards established by the Authority;
- (e) there were no parties affected by the proposal.

Submissions by the Secretary

10. The Secretary submitted that the proposed security and surveillance arrangements for the new layout were acceptable. The Secretary was satisfied with the proposal to show generic game types (the "Plan A" approach), subject to conditions requiring:
- (a) notification of the local Inspectorate when the location of table games is changed;
 - (b) compliance with the Authority's Surveillance Policy;
 - (c) CCTV coverage which provides for:
 - (i) all table games to be monitored by at least one Pan-Tilt-Zoom camera;
 - (ii) Roulette, Midi-Baccarat, Craps, Tai Sai and Moneywheel to be monitored by two fixed cameras; and
 - (iii) all other tables to be monitored by at least one fixed camera;
 - (d) specification by the applicant of whether game types are manual or electronic. In this regard, the Secretary invited the Commission to consider "whether replacing a manual game with an electronic game might result in an increase in opportunities, based on the relative speed of the games and increased opportunity for player expenditure";
 - (e) no increase in total player positions in the casino. In this regard, the Secretary noted that the ability to change game types may result in an increase in opportunities as the number of player positions varies depending on the game.
11. The submissions of the Secretary were provided to the applicant. The applicant confirmed that the game types proposed were manual. It submitted that no increase in total player positions would arise because Plan A specified maximum numbers for each game type that may be operated, thus preventing the licence holder from replacing one game type with another. The applicant advised that it could accept the proposed CCTV camera requirements proposed by the Secretary, even though these exceeded what was required in the Authority's 2003 Surveillance Policy.

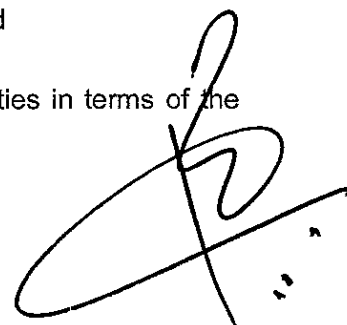


Further information requests by the Commission

12. In order for the Commission to determine whether the proposed layout and game mix could result in an increase in opportunities, it was considered necessary to compare the proposed game mix with the mix last approved by the Authority or with the game mix which was in place at the date sections 11 and 12 of the Act became effective, being 19 September 2003.
13. The applicant submitted as part of its application (Plan C) a copy of the gambling area floor plan approved by the Authority dated 5 September 2003. The plan shows the configuration of tables and machines, but does not specify games to be played on particular tables. In this regard, it was understood that the Authority did not previously regulate game mix, and enabled the licence holder to substitute games within the approved layout.
14. In response to Commission Secretariat enquiries, the applicant advised in a letter dated 19 January 2005 that a different game mix was in operation at 18 September 2003 from that proposed in Plan A. The new game mix involves an increase by six in the number of player spaces because of the replacement of one Black Jack table with a Midi Baccarat table (Black Jack has 21 player spaces, and Midi Baccarat has 27). To address the increase, the applicant proposed that conditions be imposed requiring the licence holder to limit play to 11, rather than 12, tables or to limit certain Black Jack games to five (rather than seven) boxes if 12 tables were in use. Boxes are understood to be places at the table. By removing two boxes, six player spaces are removed – two seated places and four “back betting” places.
15. Because no information regarding rates of play had been provided by the applicant, the Commission Secretariat made inquiries of the Secretary regarding the relative rates of play for the different games included in the game mix. The Secretary advised that there were differences in rates of play. Generally, the fastest game is Black Jack, followed by Baccarat, Money Wheel, Roulette, Pai Gow and Caribbean Stud Poker.

Legal advice received by the Commission

16. The Commission sought independent advice from Wilson Harle on the application, including:
 - (a) whether, in considering the change of table game mix the Commission should have regard to anything other than resulting player spaces; and
 - (b) whether adopting the Plan A approach presented any difficulties in terms of the Commission’s regulatory functions.

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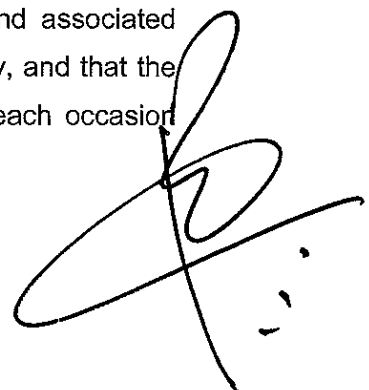
17. The Commission was advised that, in the opinion of Wilson Harle, player spaces should not be the sole criterion in determining whether a change in game mix gave rise to increased opportunities under sections 11 and 12 of the Act. As proposed by the Secretary, the Commission should also consider, as part of the overall assessment of opportunity, relative rates of play and whether games introduced since sections 11 and 12 commenced were faster or slower.
18. Wilson Harle further advised the Commission that the applicant's proposal to manage separately the increase in player spaces by limiting certain Black Jack games to five (rather than seven) boxes, was overly complicated and potentially difficult to police. It was suggested that:

In fixing conditions, the Commission should assume that casinos will operate at the maximum approved configuration and that player places will be the maximum permitted by the game rules.

19. The Wilson Harle advice to the Commission on the Queenstown application was circulated to the applicant and the Secretary but no comments were received.

Analysis

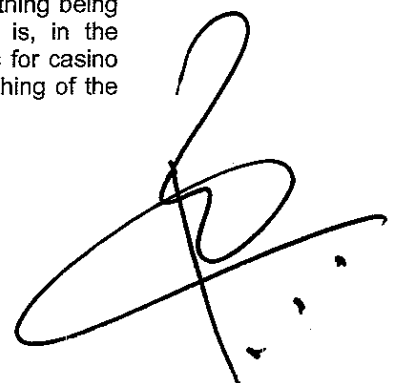
20. A key issue for the Commission in determining the application was whether amendment of conditions 2.1 and 2.2, and the grant of approval to the floor layout and game mix, was consistent with the statutory criteria set out in the section 139(2) of the Act, and section 139(2)(d) in particular. Section 139(2)(d) requires that any new or amended condition specified by the Commission "must not permit an increase in the opportunities for casino gambling".
21. In determining whether the effect of varying the conditions and granting the approvals sought would increase the opportunities for casino gambling overall, the Commission was required to give further consideration to the interpretation of the statutory language of sections 11, 12 and 139(2) of the Act. The Commission then made an assessment, based on factual information provided by the applicant and the Secretary, of whether the proposal would, in all the circumstances, give rise to an increase in opportunities for casino gambling.
22. With respect to the proposed amendment of conditions 2.1 and 2.2, the Commission noted that it had previously varied licence conditions to provide itself with powers of approval exercised by the Authority. It recognised that floor layouts and associated surveillance arrangements may need to be amended reasonably frequently, and that the requirement to go through section 139 and 140 variation processes on each occasion



may be unnecessarily onerous. Against this background, the Commission decided to amend conditions 2.1 and 2.2 as proposed.

23. The Commission recognised it was desirable to promote efficiency and avoid unnecessary applications to the Commission. At the same time it was necessary for the Commission to ensure that the approach proposed in Plan A would not have the potential for increase in opportunities for casino gambling and that security and surveillance arrangements would not be compromised.
24. The Commission noted that the Secretary had proposed conditions which addressed security and surveillance issues to its satisfaction. It also noted the Secretary's submission that the Commission should specify that approval was given only to the operation of manual games. The Commission considered that it was necessary for it to consider section 11 and 12 issues if and when it was proposed that electronic games be introduced. It would be precluded from doing so if the Commission did not specify that games were manual. The Commission noted that the applicant had no objection to the conditions proposed by the Secretary.
25. The Commission acknowledged that under previous legislation, game mix may not have been relevant. It noted that all parties to the application now recognise that player space is central to the Commission's consideration of section 11 and 12 matters. The applicant and Secretary varied in the approach to consideration of game mix. The application proceeded on the basis that player space should be the sole criterion for determining whether a change in game mix resulted in an increase in gambling opportunities. The Secretary proposed that rates of play, and whether games were electronic or manual, was also relevant.
26. The Commission addresses in more detail the relevance of rates of play in decision GC02/05. In terms of the current application it did not accept the view that player space was the only potentially relevant factor under section 12 when considering change in player mix. In its decision GC01/04 the Commission noted, in relation to the interpretation of sections 11, 12 and 139(2), that:

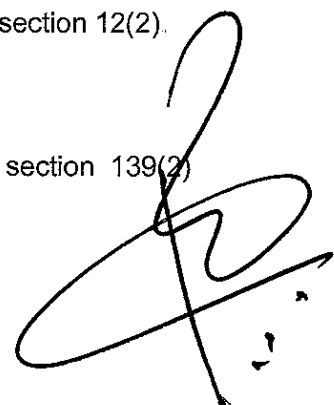
Parliament had not adopted a prescriptive, quantitative set of rules (by capping or prohibiting increases in such things as floor area, machines, table places, player numbers or turnover). Rather, section 12(2) provides a non-exhaustive list of matters which constitute an increase in opportunities. It was considered that the approach adopted by Parliament allowed for flexibility (with virtually nothing being inherently prohibited) so long as the overall affect of the changes is, in the assessment of the Commission, not likely to increase the opportunities for casino gambling. The decision, then, is an overall judgment, involving a weighing of the factual material for the Commission.

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27. In that decision, the Commission determined that, while the “places at the table” analogy was an appropriate starting point for considering, on the facts, whether there was an increase in opportunities, “consideration of other factors in a common sense way should not be foreclosed by adopting a restrictive, “closed list” approach to the interpretation of section 12(2), as Parliament did not seem to have intended the Commission to have restricted its judgment in that way”. Applicants for variations of licence conditions or approvals under licence conditions are expected to address all potential factors, positive and negative, on casino gambling opportunities in the material advanced in support of applications for variation or approval.
28. The Commission had regard to the following facts in determining that, taken as a whole, approval of the proposed game mix would not increase the opportunities for casino gambling:
- (a) the applicant’s advice that there would be no increase in the number of tables or machines;
 - (b) the applicant’s advice that the number of player spaces would increase by six player spaces;
 - (c) the understanding of the Commission that the new mix of games for which approval was sought involved the substitution of a game Midi Baccarat which was somewhat slower than the game Black Jack, which it replaced;
 - (d) the need for Commission approval to any amendment to the specified game mix.
29. The Commission’s decision involved an overall exercise of judgment. It did not seek to quantify precise differences in rates of play between Black Jack and Midi Baccarat, and acknowledges that this cannot be an exact science but may depend on a range of factors, including the speed of the player and dealer, and the number of players.
30. Equally, the Commission did not consider that it was necessary in the circumstances for the applicant to secure a reduction of six player spaces to achieve exact equivalence with the number of player spaces which existed at 19 September 2003. In forming this view the Commission agreed with the advice it received from Wilson Harle, that regulating player spaces by limiting player numbers on particular tables was unnecessarily complicated and would involve a degree of regulation not contemplated in section 12(2).

Decision of Commission

31. The Commission was satisfied that the proposal was consistent with section 139(2) criteria and resolved unanimously:

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- (a) that there were no affected parties;
- (b) to amend conditions 2.1 and 2.2 to substitute "Commission" for "Authority";
- (c) to approve the revised floor layout in Plan A (**attached** to this decision) subject to following requirements:
 - (i) the licence holder may operate on the 12 tables shown in Plan A the following games:

Black Jack – up to five games;

Midi Baccarat – up to three games;

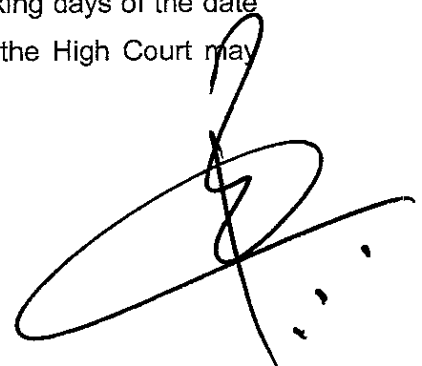
Roulette – up to three games;

Caribbean Stud Poker – up to one 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) CCTV coverage of tables must as a minimum provide for:
 - (aa) Pan-Tilt-Zoom camera coverage of all tables;
 - (bb) monitoring of Roulette and Midi Baccarat games by a minimum of two fixed cameras; and
 - (cc) monitoring of Black Jack and Caribbean Stud Poker by a minimum of one fixed camera;
 - (iii) 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.

Right of appeal

32. 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.

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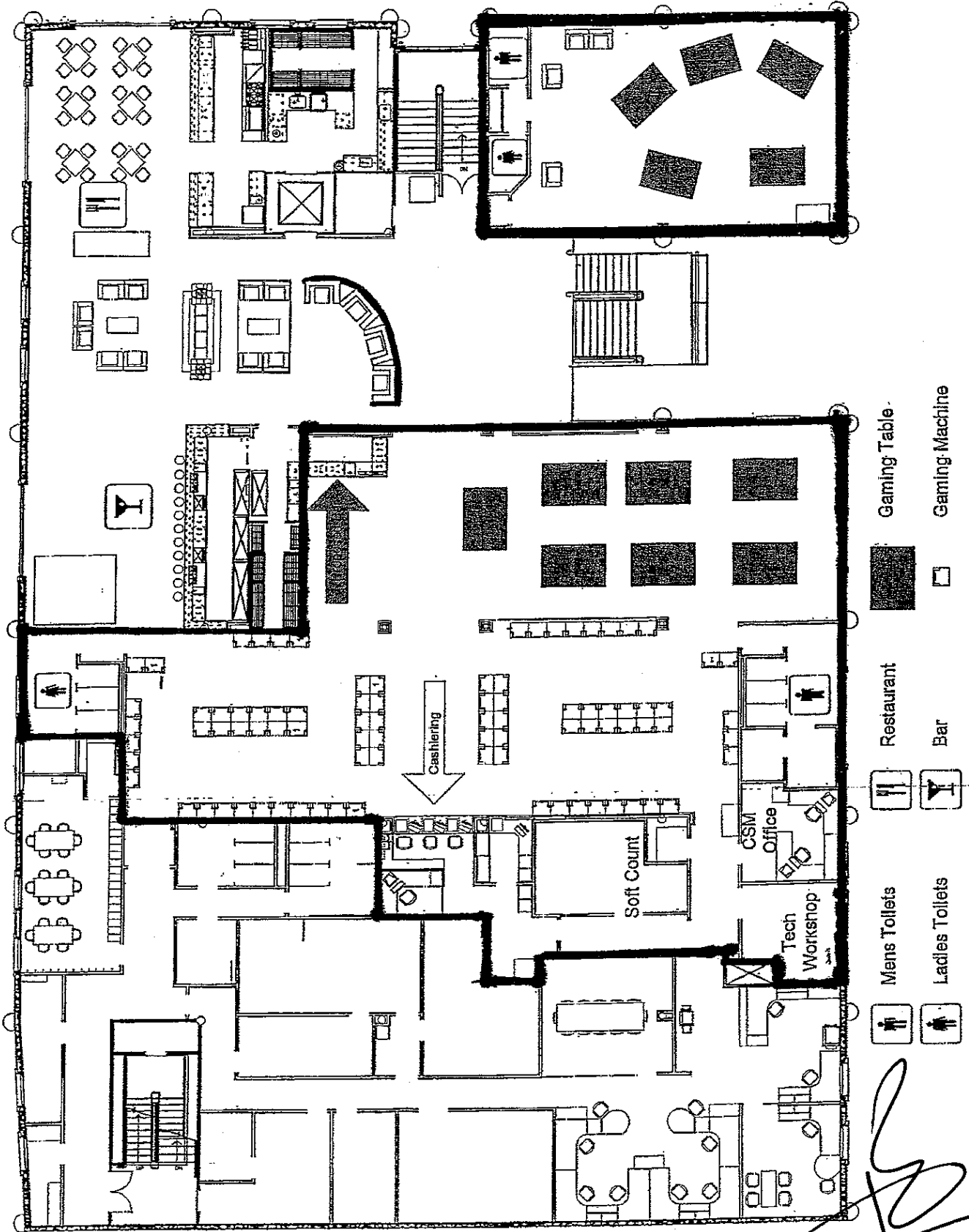
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Peter Chin
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

3 February 2005

SKYCITY Queenstown Casino - Gambling Area Floor Layout



Refer explanatory notes attached

Explanatory Notes

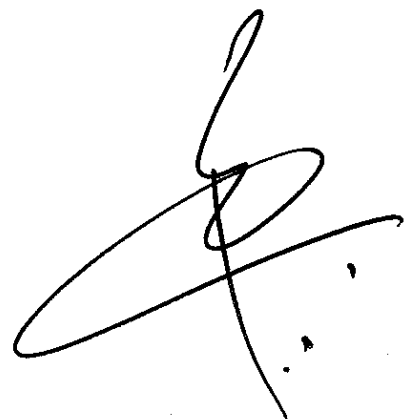
1. 86 gaming machines are represented on Plan A.
2. The licence holder may operate on the 12 tables shown in Plan A, manual versions of the following games:

Black Jack – up to five games

Midi Baccarat – up to three games

Roulette – up to three games

Caribbean Stud Poker – up to one game.

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