

IN THE MATTER of the Gambling Act 2003
AND of applications by **SKYCITY CASINO MANAGEMENT LIMITED** for approval of Annex A to the Auckland operator's licence (to include two new game mixes) and by **SKYCITY AUCKLAND LIMITED** to designate an alternative Gambling Area

BEFORE THE GAMBLING COMMISSION

Members: P Chin (Chief Gambling Commissioner)
M M Lythe
P J Stanley
G L Reeves

Date of Application: 10 April 2008

Date of Decision: 16 May 2008

Date of Notification of Decision: 4 June 2008

DECISION

ON APPLICATIONS BY SKYCITY CASINO MANAGEMENT LIMITED FOR APPROVAL OF ANNEX A TO THE AUCKLAND OPERATOR'S LICENCE (TO INCLUDE TWO NEW GAME MIXES) AND BY SKYCITY AUCKLAND LIMITED TO DESIGNATE AN ALTERNATIVE GAMBLING AREA

Application

1. SKYCITY Casino Management Limited ("**SCML**") and SKYCITY Auckland Limited ("**SCAL**") (together referred to as the "**Applicants**") applied to the Commission:
 - (a) for approval of a new Annex A, under condition 9 of SCML's operator's licence for the Auckland casino, to introduce two new game mixes; and
 - (b) under section 139 of the Gambling Act 2003 (the "**Act**"), to specify an alternative Gambling Area at the Auckland casino under SCAL's venue licence.

Licence conditions

2. Licence condition 9 of SCML's operator's licence provides as follows:

SCML's operator's licence (Auckland)

9. The Licence Holder may operate on casino gaming tables the game types and game mix(es) specified in Annex A attached to this licence. The Licence Holder shall obtain the prior approval of the Commission for any change to the game types and/or game mixes specified.

3. Licence condition 9 of SCAL's venue licence provides as follows:

SCAL's venue licence

9. The Gambling Area within the casino venue comprises the areas specified in plans marked "A" and "B" dated 22 October 2004.

Statutory criteria

4. Relevant sections of the Act are as follows:

- 4(1). In this Act, unless the context otherwise requires, –

gambling area means, –

- (a) ...
- (b) for a casino venue, that part of the venue that is specified by the Gambling Commission under section 139 or the Casino Control Authority under the Casino Control Act 1990 as an area where casino gambling is permitted or, if the Gambling Commission does not specify an area under that section or the Casino Control Authority has not specified an area, the casino venue.

overseas gambling advertisement means a form of communication that –

- (a) publicises or promotes gambling that is outside New Zealand or a gambling operator who is outside New Zealand; or
- (b) is reasonably likely to induce persons to gamble outside New Zealand.

16. Advertising overseas gambling prohibited

- (1) A person must not publish or arrange to publish, in New Zealand, an overseas gambling advertisement
- (2) Subsection (1) does not apply to publishing or arranging to publish –
 - (a) a health message concerning gambling; or
 - (b) an advertisement for services to prevent, minimise, or treat harm; or
 - (c) a message about preventing, minimising, or treating harm; or
 - (d) an advertisement for gambling equipment intended for distribution only to buyers of gambling equipment; or
 - (e) an overseas gambling advertisement in which the publicising or promotion of gambling or a gambling operator is incidental to the purpose of the advertisement.
- (3) ...
- (4) ...

139. Conditions of casino licence

- (1) The Gambling Commission may specify the conditions of a casino licence or vary or revoke the conditions of the casino licence in the following circumstances:
 - ...
 - (d) on application by the holder of the casino licence; ...
- (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 gamblers; 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 Applicants

5. The Applicants stated that:

- (a) They propose to host a Poker tournament at the Auckland casino in October 2008. The tournament would form part of the Asia Pacific Poker Tour ("APPT"). They are in early discussions with the APPT and have yet to commit to the tournament, but seek the two approvals as part of the process to host the tournament.
- (b) APPT events require the host casino to ensure that the venue staging the final is suitable for a television production. The Applicants do not consider that the current designated Gambling Area at the Auckland casino is suitable for a television production. The SKYCITY Theatre is suitable, but it is not designated as Gambling Area. SCAL seeks the following conditions to be inserted in place of condition 9 of SCAL's venue licence to enable the Theatre to be designated as Gambling Area:

9. The Gambling Area within the casino venue shall comprise the areas specified in plans marked "Schedule 1" and "Schedule 2" attached to Commission Decision GC The standard Gambling Area for the casino venue is delineated in Schedule 1. The alternative Gambling Area for the casino is delineated in Schedule 2.

9A. The alternative Gambling Area will take effect subject to the following:

- (i) the Licence Holder providing the Commission and the Inspectorate with a minimum of 10 working days notice in writing of its intention to use the alternative Gambling Area; and
- (ii) the Licence Holder specifying in that notice the dates and times when the alternative Gambling Area will apply and terminate. At termination the Gambling Area will revert to the Gambling Area delineated in Schedule 1.

Alternative Gambling Area

6. SCAL submitted, in summary, that:

- (a) The use of an alternative Gambling Area will not exacerbate harm. Security officers will control access to the alternative Gambling Area to ensure that minors are not able to gain access;
- (b) Poker games are already widely televised in New Zealand so the broadcast of the final will not exacerbate the risk of harmful behaviour;

- (c) The location of the Poker table in the alternative Gambling Area has yet to be finalised, but once that has been determined, an application will be made for an amended floor plan;
- (d) Any tables located in the alternative Gambling Area will be subject to CCTV coverage in accordance with the Surveillance Standard;
- (e) The number of tables and machines will not increase, so there will be no increase in the opportunities for casino gambling;
- (f) It is unlikely that the SKYCITY Theatre would be used for gambling purposes other than for the APPT tournament.

New game mixes

7. SCML stated that it seeks approval for two Poker oriented game mixes, "E" and "F", to allow it to host the tournament, and submitted that:

- (a) the proposed game mixes will not increase opportunities for casino gambling as:
 - (i) game mixes E and F have fewer player spaces than game mix A, the regulatory benchmark for the Auckland casino. Game mix A has 3909 player spaces, game mix E has 3720 and game mix F has 3709;
 - (ii) game mixes E and F have a slower rate of play than game mix A. Game mix A has 5967 rounds per hour, game mix E has 5907 and game mix F has 5895;
 - (iii) the overall gambling opportunities offered by game mixes E and F are less than for game mix A. Game mix A has 125,569 overall wagering opportunities, game mix E has 115,876 and game mix F has 115,382;
 - (iv) the wagering options available for game mixes E and F will not be greater than those presently available to the casino's patrons;
- (b) game mixes E and F do not create potential for increased harm;
- (c) the DIA will be advised of any adjustments to the CCTV layout in accordance with Minimum Operating Standards, and CCTV coverage over the additional Poker tables would be in accordance with the Surveillance Standard.

Submissions by the Secretary

8. The Secretary submitted, in summary, that:

- (a) He has no concerns, in principle, with the SKYCITY Theatre being designated as a Gambling Area on a temporary basis for the conduct of a Poker tournament, but has two concerns in relation to the proposed APPT Poker tournament, as follows:
- (i) it is highly unlikely that the Applicants will be able to host the APPT Poker tournament without breaching the section 16 prohibition on publishing an overseas gambling advertisement as defined in the Act; and
 - (ii) the Applicants have not adequately addressed the harm minimisation and prevention implications of hosting the tournament, as the tournament may promote internet gambling which is "largely unregulated, unsupervised and [an] anonymous form of gambling [with] the potential to cause significant gambling related harm."
- (b) He has no concerns with the proposed game mixes as they provide fewer opportunities for casino gambling than game mix A, the Commission's regulatory benchmark.
- (c) Should the Commission approve the applications, they should be subject to the Secretary's satisfaction of any other regulatory requirements, and be restricted to the operation of the APPT tournament in October 2008.

Applicants' submissions in reply

9. In reply, the Applicants submitted, in summary, as follows:

- (a) If the tournament proceeds and is successful, it is likely they would want to stage the event annually, so do not want the approvals limited to 2008.
- (b) It is too early to assess the implications of section 16 of the Act, or other matters raised by the Secretary, as specific details of the tournament have yet to be finalised.
- (c) The present applications are to facilitate planning of the tournament and they acknowledge that approval would not provide all the necessary authorities to proceed, nor would they discharge them from their obligations to comply with all their legal requirements.

Analysis

The Applicants have sought approval for two new Poker oriented game mixes, and applied to designate the SKYCITY Theatre, on an alternative basis, as part of the casino's Gambling Area. The Theatre is within the casino venue as defined by the casino venue

licence. The applications form part of the Applicants' planning to host a possible APPT Poker tournament at the Auckland casino in October 2008.

11. The Commission noted that it has been asked to consider the two applications without full details of the proposed tournament. The Commission considered this to be less than satisfactory, but acknowledged that the Applicants may not yet be in a position to provide complete information, given that they are apparently still finalising details of the tournament with APPT.
12. The Secretary is not concerned with the applications in principle, but has concerns with possible harm prevention and minimisation implications associated with the tournament, and with the Applicants' ability to host the tournament without breaching section 16 of the Act. Section 16 prohibits the publication of overseas gambling advertising, which is defined at section 4(1).
13. As it is presently unknown whether the tournament will proceed and, if so, precisely how it will be operated, there is no merit in speculating on possible breaches of the Act by the Applicants. The Commission can conceive of circumstances in which the Applicants could host the tournament in a manner that is fully compliant with all of their obligations under the Act, Regulations and licence conditions. Conversely, it is also possible for the Commission to conceive of circumstances in which the Applicants host the tournament in a non-compliant manner. The Commission noted that the Applicants' obligations to remain compliant are ongoing, and any approvals that the Commission allows with this decision do not release the Applicants from these obligations. Any non-compliance by the Applicants could have serious consequences for them.
14. Condition 9 of SCAL's venue licence provides that "the Gambling Area within the casino venue comprises the areas specified in plans marked "A" and "B" dated 22 October 2004". The plans marked "A" and "B" set out clearly defined Gambling Areas at the Auckland casino which do not include the SKYCITY Theatre. The Commission is empowered, under section 139 of the Act, to specify the Gambling Area to include the Theatre by way of licence condition.
15. The Commission considers that it is fundamental that there is adequate certainty surrounding what constitutes the gambling area at any particular point in time. This is particularly so in relation to issues such as access to the gambling area by minors.
16. In this instance, the Applicants propose for the SKYCITY Theatre to be designated as Gambling Area by providing a minimum of 10 working days notice in writing, and specifying the dates and times at which the alternative Gambling Area will apply and terminate. They propose using security guards to control access and prevent minors

entering the Gambling Area, as they presently do at the other Gambling Areas at the casino.

17. The Commission was satisfied that the Applicants' proposal provides adequate certainty and is consistent with the section 139(2) criteria, and sections 11 and 12 of the Act.
18. The Secretary submitted that approval of the application should be limited to the 2008 Poker tournament, meaning that should the Applicants wish to host the tournament in 2009 and subsequent years, fresh applications would be required.
19. In the absence of complete information surrounding the 2008 tournament, the Commission considered the Secretary's approach to be prudent. The Commission considers that it would not be sensible to confer a power on SCAL to change the Gambling Area on notice based on the very limited information that it has before it. After the proposed tournament has taken place, all parties will be in a better position to appreciate the regulatory issues that can arise in running such tournaments. Accordingly, the Commission agrees with the Secretary that the approval should be for the proposed tournament only.
20. As there is some present uncertainty whether the proposed tournament will proceed and, if so, the precise dates on which the Theatre is needed, the Commission has decided to approve the application in principle only, without making a formal amendment to condition 9 of the venue licence to designate the Theatre as Gambling Area at the present time. The Commission will formally amend the licence after the Applicants confirm that the tournament will proceed, and when the Theatre is needed. The intention is that the amendment to the casino venue licence will be specific for the precise dates of the tournament only.
21. This decision is accordingly a decision in principle only to allow the applicants to proceed with their planning for the proposed tournament in the knowledge that the necessary licence amendment will be made when and if required. If the proposed tournament proceeds without problems, the Commission is likely to consider favourably an application for a permanent change to the licences to facilitate future tournaments.

Game mixes

22. The Commission's approach when determining whether a game mix may result in an increase in opportunities is to compare what is proposed against the regulatory benchmark, which is the approved game mix that represents the greatest level of opportunities to gamble. Game mix A is the regulatory benchmark.

23. The Commission compared proposed game mixes E and F with game mix A, and noted that both have fewer player spaces, fewer rounds per hour and fewer overall wagering opportunities than game mix A. The Commission considered that proposed game mixes E and F would not increase opportunities for casino gambling.

Further observations

24. Having approved the applications, the Commission noted the following points:
- (a) the Applicants acknowledge that further regulatory approvals are required before they can host the proposed tournament;
 - (b) approval of the two applications should not be taken to mean that such further approvals can be assumed;
 - (c) the above approvals do not relieve the Applicants from complying with all of the relevant regulatory requirements, including section 16 of the Act;
 - (d) approval of the two applications does not preclude the Secretary from seeking further amendments to the licence conditions if necessary.

Decision of the Commission

25. The Commission decided unanimously:
- (a) to approve Annex A (**attached** to this decision) under condition 9 of SCML's operator's licence;
 - (b) that the proposal to specify the Gambling Area so as to include the SKYCITY Theatre was consistent with section 139(2) criteria and is approved in principle for a single tournament, once the necessary details are known; and
 - (c) not to amend condition 9 of SCAL's venue licence until the Applicants notify the Commission in writing that the tournament will proceed, and the precise dates that the SKYCITY Theatre is required to be included in the Gambling Area for the purposes of the proposed tournament.

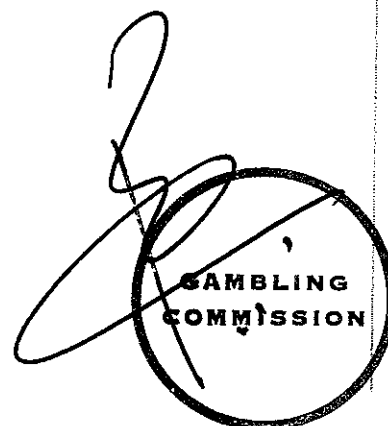

Peter Chin
Chief Gambling Commissioner

4 June 2008

ANNEX A

Pursuant to condition 9 the following game mixes may be operated by the Licence Holder on casino gaming tables subject to the following conditions and requirements:

- A
- Blackjack/Pontoon - up to 44 games
 - Roulette - up to 24 games
 - Touchbet Roulette - 1 game with up to 14 player spaces
 - Caribbean Stud Poker - up to 10 games
 - Midi Baccarat- up to 17 games
 - Mini Baccarat - up to 7 games
 - Pai Gow - up to 4 games
 - Tai Sai (Double Side) - 1 game
 - Tai Sai (Single Side) - 1 game
 - Money Wheel (Double Side) - 1 game
- B
- Blackjack/Pontoon ('7 Box')- up to 22 games
 - Blackjack/Pontoon ('5 Box') - up to 16 games
 - Roulette - up to 23 games
 - Rapid Roulette - up to 2 games with up to 21 player spaces
 - Caribbean Stud Poker - up to 7 games
 - Midi Baccarat- up to 18 games
 - Mini Baccarat - up to 7 games
 - Money Wheel (Double Side) - 1 game
 - Pai Gow - up to 3 games
 - Poker - up to 8 games with up to 10 player spaces
 - Tai Sai (Double Side) - 1 game
 - Casino War - 2 games
- C
- Blackjack/Pontoon ('7 Box') - up to 25 games
 - Blackjack/Pontoon ('5 Box') - up to 16 games
 - Roulette - up to 22 games
 - Rapid Roulette - up to 2 games with up to 21 player spaces
 - Caribbean Stud Poker - up to 7 games
 - Midi Baccarat- up to 18 games
 - Mini Baccarat - up to 7 games
 - Money Wheel (Double Side) - 1 game
 - Pai Gow - up to 4 games
 - Poker - up to 6 games with up to 10 player spaces
 - Tai Sai (Single Side) - 1 game
 - Tai Sai (Double Side) - 1 game
- D
- Blackjack/Pontoon ('7 Box')- up to 24 games
 - Blackjack/Pontoon ('5 Box') - up to 16 games
 - Roulette - up to 23 games
 - Rapid Roulette - up to 2 games with up to 21 player spaces
 - Caribbean Stud Poker - up to 7 games
 - Midi Baccarat- up to 18 games
 - Mini Baccarat - up to 7 games
 - Money Wheel (Double Side) - 1 game
 - Pai Gow - up to 3 games
 - Poker - up to 8 games with up to 10 player spaces
 - Tai Sai (Double Side) - 1 game



- E
 - Blackjack/Pontoon ('7 Box')- up to 22 games
 - Blackjack/Pontoon ('5 Box') -- up to 11 games
 - Roulette – up to 19 games
 - Rapid Roulette – up to 2 games with up to 21 player spaces
 - Caribbean Stud Poker – up to 7 games
 - Midi Baccarat- up to 18 games
 - Mini Baccarat – up to 7 games
 - Money Wheel (Double Side) – 1 game
 - Pai Gow – up to 3 games
 - Poker -- up to 17 games with up to 10 player spaces
 - Tai Sai (Double Side) – 1 game
 - Casino War – 2 games

- F
 - Blackjack/Pontoon ('7 Box')- up to 22 games
 - Blackjack/Pontoon ('5 Box') – up to 11 games
 - Roulette – up to 18 games
 - Rapid Roulette – up to 2 games with up to 21 player spaces
 - Caribbean Stud Poker – up to 7 games
 - Midi Baccarat- up to 18 games
 - Mini Baccarat – up to 7 games
 - Money Wheel (Double Side) – 1 game
 - Pai Gow – up to 3 games
 - Poker – up to 18 games with up to 10 player spaces
 - Tai Sai (Double Side) – 1 game
 - Casino War – 2 games

Notes

- 1 The Licence Holder is permitted to change between the game mixes specified in A, B, C, D, E and F subject to providing the Commission and the Inspectorate with a minimum of 5 working days notice in writing of its intention to do so

- 2 The Licence Holder is permitted to operate automatic shufflers on:
 - the Poker tables specified in Game Mixes B, C, D, E and F; and
 - 50% of open Blackjack tables specified in Game Mix A;
 - all Blackjack tables specified in Game Mixes B, C, D, E and F;
 - CSP and Baccarat tables specified in each of the game mixes, provided that no more than 10 such shufflers are operated on CSP games and no more than 24 such shufflers are operated on Baccarat games
 - the Casino War games specified in Game Mixes B, E and F

