

IN THE MATTER of the Gambling Act 2003
AND on an application by
**SKYCITY AUCKLAND
LIMITED** for approval of
floor layout plans

BEFORE THE GAMBLING COMMISSION

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

Date of Application: 17 June 2005

Date of Decision: 15 July 2005

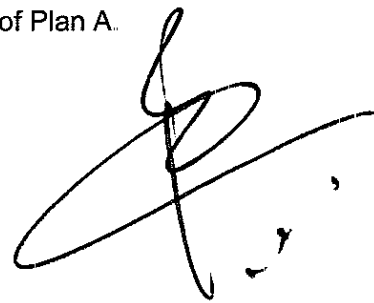
Date of Notification
of Decision: 27 July 2005

DECISION

**ON AN APPLICATION BY SKYCITY AUCKLAND LIMITED
FOR APPROVAL OF FLOOR LAYOUT PLANS**

Application

1. SKYCITY Auckland Limited (the "**Applicant**") applied for approval of revised floor plans for Levels 2 and 3 of SKYCITY Auckland casino under condition B1(a) of its venue licence. The proposed changes involved:
 - (a) removing one electronic Rapid Roulette table game and three Black Jack games and replacing them with three new manual roulette games and one Midi Baccarat game;
 - (b) installing 20 Rapid Roulette terminals for use as gaming machines. In the event that it was not permitted to do this, approval was sought to operate 20 standard gaming machines in their place; and
 - (c) reconfiguring tables and gaming machines on both levels.
2. These changes were shown in Plan A attached to the Applicant's application. Commission approval was sought for Plan B, being a "clean copy" of Plan A.

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3. The Applicant also applied for approval of an alternative floor layout which it subsequently withdrew.

Statutory criteria

4. The application was for approvals under an existing licence condition. As there was no variation of a licence condition, the Commission was not required to consult on the proposals as provided in section 140 of the Gambling Act 2003 (the "**Act**").
5. The Commission is, however, free to determine its own procedure in terms of processing approval applications. In the circumstances, the Commission considered it appropriate to seek the views of the Secretary, given his operational interest.

Licence conditions

6. Condition B1 (as amended by the Commission in decision GC02/04) provides as follows:

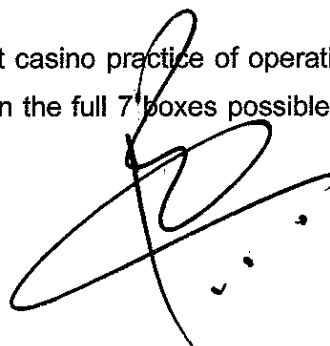
Approval of specifications for security and surveillance installation

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

- (a) gaming area floor layout showing table games, gaming machines and closed circuit television cameras;
- (b) lighting in any catwalks 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 installations, auxiliary power; and
- (f) the master key system or access control system.

Submissions by the Applicant

7. The Applicant acknowledged that approval of the game mix specified in Plan B would result in an increase of seven player spaces from what is currently approved, and an increase of 16 player spaces from what was in place at 18 September 2003, when the statutory provisions prohibiting an increase in opportunities for casino gambling took effect.
8. The Applicant submitted that minor increases arising from changes to game types should not be regarded as increasing the opportunities for casino gambling and that the increase was immaterial and, in any event, offset by other factors being:
 - (a) a reduction of 60 player spaces arising from current casino practice of operating 10 Black Jack games using only 5 boxes rather than the full 7 boxes possible (3 player spaces being associated with each box);



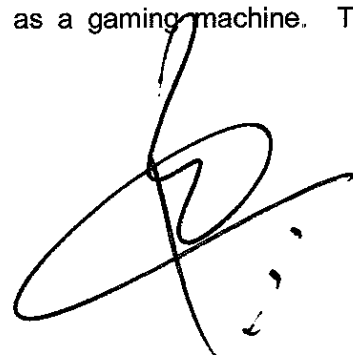
- (b) the operator's intention to install an unspecified number of 8 box Midi Baccarat tables in the International Room; and
 - (c) the fact that Black Jack, Baccarat and Pai Gow have never operated at the casino anywhere near their theoretical capacities in terms of player spaces.
9. Without prejudice to its view that rates of play or game speed is not a relevant consideration under sections 11 and 12 of the Act, the Applicant submitted that the proposed changes would not increase opportunities because:
- (a) three Black Jack games would be replaced by two Roulette games and a Midi Baccarat game. On this point, the Applicant submitted:

... we understand that the Commission's secretariat has determined that both Roulette and Baccarat games are slower than Blackjack games. On this analysis we are replacing three faster games with three slower games.
 - (b) one game of electronic roulette would be replaced by one game of manual Roulette which, in the Applicant's experience, does not have an average spin rate that is materially different; and
 - (d) Rapid Roulette gaming machines would be considerably slower than standard gaming machine terminals.
10. The Applicant noted that the proposed changes would require minor adjustments to the CCTV layout, but confirmed that arrangements would be consistent with the Casino Control Authority's Surveillance Policy and the Commission's requirements set out in decision GC02/05.

Submissions by the Secretary

11. The Secretary submitted as follows:
- (a) Game rules and minimum equipment standards do not exist to have Rapid Roulette terminals recognised as gaming machines and, in the absence of these, it would not be possible for the Applicant to operate Rapid Roulette terminals as gaming machines.

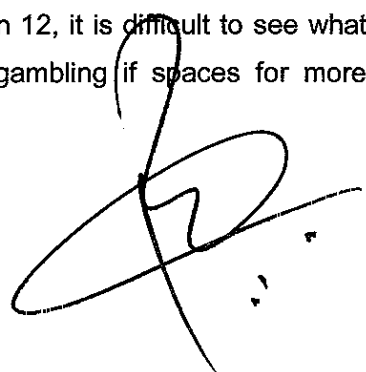
In its submissions in reply, the Applicant challenged this and submitted that there was no impediment to Rapid Roulette operating as a gaming machine. The Secretary maintained that his position was correct.

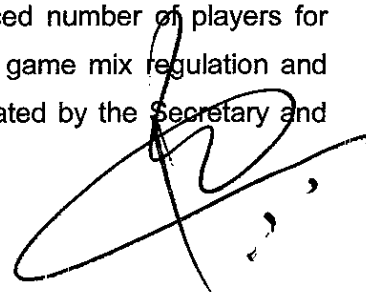


- (b) Mitigating increases by limiting player numbers on particular games (ie 5 box Black Jack and 8 box Midi Baccarat) was unnecessarily complicated and should not form part of section 12 considerations.
- (c) It was inherently difficult to compare player spaces for different table games against rates of play, especially in the absence of information on the true equivalencies.
- (d) The Secretary had no concerns with the operation of standard gaming machines in place of Rapid Roulette terminals, assuming there was compliance with the specified ratio of machines to table games.

Analysis

12. The Commission considered the proposal carefully in terms of sections 11, 12 and 139(2)(d) of the Act. It is required, under section 139(2)(d), to permit changes under licence conditions only in circumstances where the change will not increase the opportunities for casino gambling.
13. The proposal would result in an increase of seven player spaces from the number currently permitted (and would be 16 player spaces in excess of player spaces existing in September 2003, when section 11 became effective). Section 12(2) expressly provides that an increase in player spaces will be an increase in opportunities for casino gambling unless the increase in spaces is accompanied by a reduction in other opportunities for casino gambling that the Commission considers is proportionate. The Commission considers that an applicant seeking a change in conditions has the task of persuading the Commission, by pointing to adequate and compelling evidence, that either there will be no increase in opportunity at all or that any increase in one area is offset by a proportionate reduction elsewhere.
14. Having considered the material available to it, including the Applicant's submissions, the Commission is not satisfied that the proposal would not result in an increase in opportunities for casino gambling. The Commission therefore declines the application.
15. Although the Applicant submitted that the increase was "immaterial" and that "minor increases [in player spaces] should not be seen as increasing the opportunities for casino gambling", section 12 requires any increase in player spaces to be offset by a proportionate reduction elsewhere. Even apart from section 12, it is difficult to see what might constitute an increase in opportunities for casino gambling if spaces for more players does not.

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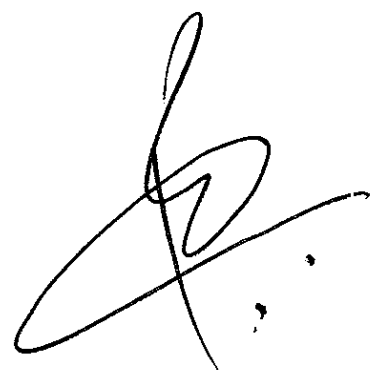
16. It is possible that the Applicant was submitting that the Commission should adopt a form of materiality threshold, in effect deciding that sections 11 and 139(2)(d) are only concerned with substantial increases, as opposed to "minor" ones. If this is the case, the Commission does not accept this approach. There is nothing in the words or the context of sections 11, 12 and 139(2)(d) which permit the Commission to treat these sections as not applying to increases which are minor. It would have been easy to have inserted a qualifying adjective, if that had been Parliament's intention. The section as it stands neither requires nor permits the Commission to create a different benchmark ("material increase" or "significant increase") in exercising its statutory functions and powers.
17. The suggestion that the Applicant would operate reduced numbers of player spaces for both Black Jack and Midi Baccarat, offsetting the proposed increase in player spaces, was vague, was based only on current or future practice (without legal constraint), and did not constitute, in the Commission's view, a relevant reduction. The Applicant did not propose a condition change but simply asked the Commission to act on the basis of an assertion of what current practice is and what is intended to happen at some point in the future. With Midi Baccarat, the Applicant submitted "we are also moving to implement some eight box Midi Baccarat tables in the International Room which will further reduce the number of player spaces available". The Applicant did not state when this change would take place, how many tables would be involved and what the precise effect on the reduction in player spaces would be. The Commission is not prepared to take into account claims to voluntary reduction in activity. At a minimum, reduction in activity would need to be underpinned by condition changes removing the right to resume the activity and, generally speaking, the Commission does not favour creating such exceptions to the normal game rules.
18. The Commission has previously considered the issue of games operating with reduced player spaces in decisions GC01/05 and GC02/05. In those decisions, the Commission considered that it was not appropriate, in the circumstances, to regulate player spaces by limiting player numbers on particular tables as this was unnecessarily complicated and would involve a degree of regulation not contemplated in section 12(2). The Commission indicated that it would approach applications on the basis that operators would utilise all opportunities available under the prevailing conditions.
19. If the Applicant had proposed a condition change limiting the number of boxes used on certain tables permanently, the change would at least have been more permanent and unconditional than what was proposed in previous applications but such a proposal would require a change in approved game mix to reflect the reduced number of players for specified games. This would create additional complexity in game mix regulation and create a point of difference between the game rules promulgated by the Secretary and
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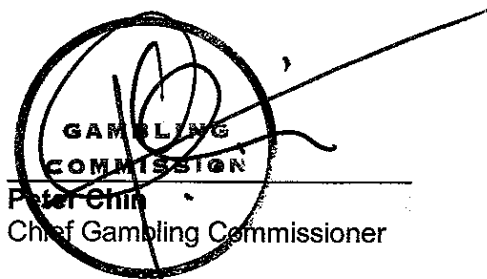
the conditions approved by the Commission (ie the conditions would require certain games to be played other than in terms of the game rules). The Commission would have had concerns about these aspects if the application had advanced such a proposal.

20. The Commission thought that the Applicant's submissions on rates of play were inadequately supported by compelling and reliable information. The Applicant invited the Commission to reach a view that the increase in player spaces was partially offset by slower games replacing faster ones, but did not put forward any evidence or internally sourced information to support its position on game speeds. Instead, the Applicant sought to rely on very limited information obtained by the Commission prior to decision GC01/05.
21. Both the Applicant and the Secretary have subsequently criticised the accuracy and value of the limited information obtained earlier on game speed. The Commission has been mindful of that criticism and has endeavoured to build up its own internal information resources on relative game speed. It has sought, so far without success, further information from both the Applicant and the Department of Internal Affairs. It considers that operators are in a good position to collate their own internal data or to undertake controlled tests of relative game speed and it is reasonable to expect operators to put such information before the Commission whenever it is relevant, especially when the operator concerned wishes the Commission to take game speed into account as a proportional reduction in casino gambling opportunity.
22. The Applicant's proposed floor plan would be likely, in the Commission's assessment and on the information before it, to increase opportunities for casino gambling. The Applicant has not proposed an alternative floor plan that would not increase those opportunities.

Decision of the Commission

23. The Commission is unanimous that the application be declined as there is insufficient information for the Commission to be satisfied, in accordance with section 139(2)(d), that the proposal does not give rise to an increase in opportunity for casino gambling.

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Peter Chin
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

27 July 2005