

IN THE MATTER of the Gambling Act 2003
AND of an application by
SKYCITY AUCKLAND LIMITED to revise
gambling floor layouts

BEFORE THE GAMBLING COMMISSION

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

Date of Application: 8 December 2004 (filed 9 December 2004)

Date of Decision: 24 January 2005

Date of Notification of Decision: 8 February 2005

DECISION

**ON AN APPLICATION BY SKYCITY AUCKLAND LIMITED TO
REVISE GAMBLING FLOOR LAYOUTS**

Application

1. SKYCITY Auckland Limited (the "**applicant**") applied under licence condition B1(a) of its venue licence for approval of three different floor layouts which incorporate three different game mixes. The approvals sought were for the following:
 - (a) the floor layout and game mix for Levels 2 and 3 existing at 8 December 2004. This layout was shown in Plan A;
 - (b) a revised floor layout for Level 2 involving the introduction of Rapid Roulette (a new electronic version of roulette), the removal of two Black Jack tables, and the reconfiguration of Pits 3 and 4. This layout and game mix was shown in Plan B;
 - (c) a revised floor layout for Level 3, involving a new floor layout for the refurbished VIP International Room and changes to Pit 10 at the back of Alto (the "old" VIP International Room). The proposal involved adding one Black Jack table and 12 gaming machines. This layout was shown in Plan C.

2. The floor layouts in Plans A, B and C show the configuration of tables and machines but do not specify the games to be played on individual tables. The applicant requested that an overall game mix be approved, and that it should have the flexibility to operate the games specified interchangeably within the permitted maximum numbers for individual games.
3. Plan A depicted 110 tables and 1,635 gaming machines over Levels 2 and 3. The applicant proposed that the Commission approve the operation on the tables of any of the following game types in the configuration shown:

Black Jack – up to 47 games

Roulette – up to 21 games

Electronic Roulette – up to one game

Caribbean Stud Poker – up to 10 games

Midi Baccarat – up to 17 games

Mini Baccarat – up to seven games

Pai Gow – up to four games

Tai Sai – up to one game

Moneywheel – up to two games.

4. Plan B depicted a revised layout for Level 2. Approval of Plan B would result in 109 tables (including Rapid Roulette) and 1,635 gaming machines being located on the two levels of the gambling area. The game mix would be identical to that specified in relation to Plan A, with the addition of Rapid Roulette, and the removal of two Black Jack tables.
5. Plan C depicted a revised layout for Level 3. Approval of Plan C would result in 110 tables and 1,647 gaming machines on the two levels of the gambling area. The game mix would be identical to that specified in relation to Plan B, with the addition of one Black Jack table and 12 gaming machines.

Statutory criteria

6. The application was for approvals under a licence condition. It did not constitute an application to vary a licence condition, and the Commission was not therefore required formally to consult on the proposal as provided in section 140 of the Gambling Act 2003 (the "Act").
7. The Commission is, however, free to determine its own procedure in terms of processing approval applications. In the circumstances, it considered it appropriate to seek the views

of the Secretary, given his operational interest and the issues of interpretation raised. The applicant was provided with an opportunity to comment on submissions made by the Secretary.

8. Provisions of the Act relevant to the application included the definition of gaming machine and sections 11 and 12 of the Act.

9. **"Gaming machine"** is defined in section 4 of the Act as follows:

- (a) means a device, whether totally or partly mechanically or electronically operated, that is adapted or designed and constructed for use in gambling; and
- (b) includes a device for gambling that is conducted partly by a machine and partly by other means; and
- (c) includes a device, or type of device, that is declared to be a gaming machine by regulations made under section 368; but
- (d) does not include-
 - (i) a device used only to draw a lottery; or
 - (ii) a random selection device used in a game of housie; or
 - (iii) a device used only to dispense tickets that is not capable of being used to decide the outcome of gambling; or
 - (iv) a communication device that is used both to dispense tickets in and draw a lottery that is a sales promotion scheme; and
- (e) does not include a device, or type of device, that is declared not to be a gaming machine by regulations made under section 368; and
- (f) does not include a device operated by the Lotteries Commission.

10. Sections 11 and 12 of the Act provide as follows:

11 No increase in casino gambling

A person must not increase the opportunities for casino gambling.

12 What is increase in casino gambling

(1) Decisions on what constitutes an increase in the opportunities for casino gambling are a function and responsibility of the Casino Control Authority, until section 297 of this Act comes into force, and of the Gambling Commission after that.

(2) An increase in the opportunities for casino gambling includes but is not limited to-

- (a) an increase in the number of gaming machines unless the increase is accompanied by a reduction in the number of table games that the Casino Control Authority, or the Gambling Commission, believes is proportionate;
- (b) an increase in the number of table games unless the increase is accompanied by a reduction in the number of gaming machines that the Casino Control Authority, or the Gambling Commission, believes is proportionate;
- (c) an increase in total player space at table games unless the increase is accompanied by a reduction in other opportunities for casino

gambling that the Casino Control Authority, or the Gambling Commission, believes is proportionate.

- (3) Opportunities for casino gambling are not increased-
 - (a) by increases, in the Auckland casino, that comply with the Order for the Variation of Conditions of Casino Premises Licence dated 6 December 2002;
 - (b) by gambling conducted by the New Zealand Racing Board referred to in section 120.

11. In respect of section 12(3)(a), the Order for Variation dated 6 December 2002 (the "Order") requires that the licence holder ensure that:

- (a) the number of gaming machines in the casino does not exceed 1,647, and
- (b) the number of gaming tables in the casino does not exceed 110.

12. Condition B1 of the applicant's casino venue licence (pursuant to which approvals were sought) provides as follows:

B1 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 layouts showing gaming tables, gaming machines and close circuit television cameras;
- (b) lighting and 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 installation, auxiliary power; and
- (f) the master key system or access control system.

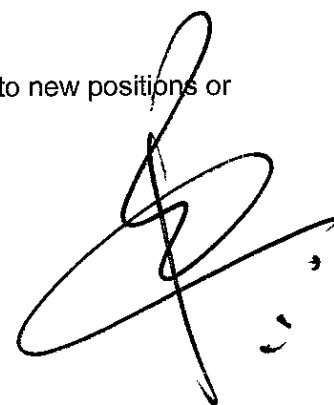
Submissions by the applicant

13. The submissions made by the applicant in its application and a letter to the Chief Gambling Commissioner dated 17 December 2004 are summarised below. Submissions were made specifically in support of Plans A, B and C, with general submissions, relating to the proposal as a whole, being made on the potential for increased opportunities for casino gambling.

Plan A – Approval of current floor configuration

14. The applicant submitted:

- (a) renovations during 2004 involved moving machines and tables to new positions or into storage;



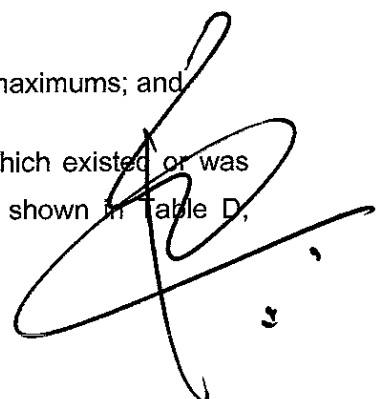
- (b) it was impracticable to submit new floor plans to reflect each change and it was agreed by the Casino Control Authority (the "**Authority**") that changes should be submitted to the local Inspectorate with periodic updates to Authority staff;
- (c) renovations were nearing completion, and gaming equipment was being retrieved and reinstalled;
- (d) the applicant did not consider that it required additional approvals prior to the reactivation of use of tables and machines, or for the relocation (which had already occurred) of two Black Jack tables and one Touchbet table within the same pit location;
- (e) the Plan A layout provided for 110 tables and 1,635 machines and was within the maximums established pursuant to the Order;
- (f) the game mix proposed by the applicant was different from the game mix which existed (or which was approved) in September 2003, when section 11 came into force, but there was no increase in the number of player spaces.

Plan B – Approval of changes to the table layout on the Main Gaming Floor, including the introduction of Rapid Roulette

15. The applicant submitted that:
- (a) the introduction of Rapid Roulette would not increase opportunities for gambling, as the removal of two Black Jack tables which would accompany the change would result in a net reduction of 22 player spaces (Rapid Roulette has 20 player spaces, while Black Jack has 21 player spaces);
 - (b) there would be a decrease in the total number of tables from 110 to 109;
 - (c) the proposal was consistent with the 15:1 ratio for machines to tables;
 - (d) CCTV layout had been revised to reflect the revisions to the floor layout.

Plan C – Approval of International VIP Room

16. The applicant submitted that there would be no increase in casino gambling opportunity as:
- (a) tables and machines were being increased only to permitted maximums; and
 - (b) there was no increase in player spaces from the number which existed or was approved by the Authority as at 18 September 2003. As shown in Table D,



attached to the application, an estimated 3,911 player spaces existed then. The applicant proposed to limit the total number of player spaces under the new game mix to 3,908 spaces by converting two Black Jack games to five box games.

Submissions by the Secretary

17. The Secretary made submissions on 21 January 2005 in relation to the proposed security and surveillance arrangements as follows:

The Secretary submits it is not concerned with security and surveillance with regard to all of the proposed gambling area floor layout plans

Should the proposed floor layouts meet with the Gambling Commission's approval, the Inspectorate would be formally notified by the casino operator, in accordance with Minimum Operating Standards Records and Notifications (2004) section 9(1)(b), prior to the location changes of gaming tables and gaming machines. Under section 10(2), the Inspectorate would also be notified of any consequential changes to the CCTV (closed circuit television) system.

Following notification, the Inspectorate would be responsible for ensuring that the established levels of camera coverage referenced in the Casino Control Authority Surveillance policy are complied with prior to the opening of the new floor layouts. The Secretary would expect in relation to CCTV coverage this to include:

- i all table games monitored by at least one Pan-Tilt-Zoom camera;
- ii all table games monitored by at least one fixed camera; and
- iii certain table games monitored by 2 fixed cameras, for example, Roulette, Midi-Baccarat, Craps tables, Tai Sai and Moneywheel tables.

18. In relation to opportunities for casino gambling, the Secretary submitted as follows:

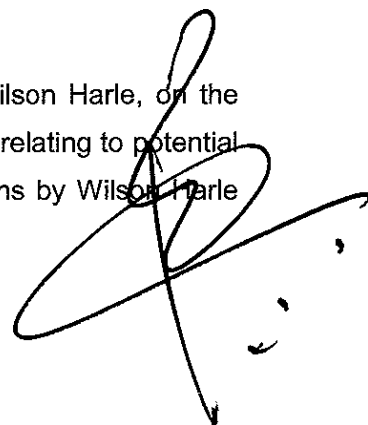
In terms of the Gambling Commission's discretion under section 12 of the Act, you may wish to consider whether the introduction of a new form of electronic roulette (or other table games) in substitution for other gambling opportunities might result in an increase in the opportunities for casino gambling.

The Secretary submits that SKYCITY Auckland Limited's formulation of equating player spaces between table games as the single determinant as to whether there will be "an increase in the opportunities for casino gambling" may be too simplistic. Section 12 of the Act gives the Gambling Commission discretion to consider other factors beyond the notion of player spaces.

One factor could be the relative speed of the games and the increased opportunity for player expenditure. For example, in the Secretary's submission of 23 December 2004 it was estimated that Electronic Roulette (Touchbet) equates to an additional 6 spins per 30 minutes when compared to standard (manual) Roulette. The Secretary understands that the Gambling Commission has also investigated the relative turnover of blackjack tables utilising manual and automatic shuffling.

Advice received by the Commission

19. The Commission received independent advice from its solicitors, Wilson Harle, on the application and, in particular, the application of section 12 and issues relating to potential increase in opportunity associated with the proposal. Key conclusions by Wilson Harle include the following:



- (a) the transitional effect of section 12(3)(a) is effectively spent. This is because the applicant had already exercised its right to install machines and tables up to permitted maximum number in the Authority's Order;
- (b) changes in rates of play are potentially relevant when considering whether there is an increase in casino gambling opportunities;
- (c) technological change may increase rates of play and the Commission may consider it appropriate to require other offsetting changes to effect proportionate reductions in gambling opportunity to compensate;
- (d) the Commission should consider rates of play and player spaces, in the round, in deciding whether to approve any change in the game mix and this can be expected to be a factor whenever electronic forms of game are introduced;
- (e) it is not obvious one way or another whether the change in game mix from September 2003 to the mix for which approval is sought results in an overall increase;
- (f) Wilson Harle would not recommend a benchmark for future regulation which focuses solely on player spaces;
- (g) the "blank box" approach gives the applicant control over placement of games. While the approach raises surveillance and enforcement issues, these can probably be addressed as the Secretary submits;
- (h) Rapid Roulette is a gaming machine in terms of the definition of the Act and equates to 20 machines. Touchbet (which was already in use by the applicant) is also a gaming machine. Their true legal status means that approving a layout which assumes they are not gaming machines has serious implications for both the maximum numbers and ratios specified elsewhere in the conditions.

20. The Wilson Harle advice was circulated to the applicant and the Secretary for their comment. The discussion below addresses the further submissions made by the applicant and the Secretary in relation to that advice.

Analysis

21. Key issues for the Commission in determining the application included the following:
- (a) Consideration of whether the proposal, considered overall, was consistent with sections 11 and 12 of the Act. The Commission was required to give further consideration to the statutory language, and then to make 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.

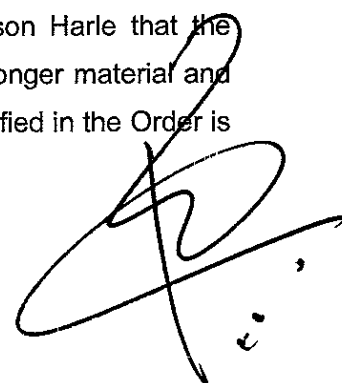
- (b) Consideration of whether to approve a new floor layout incorporating Rapid Roulette and Touchbet Roulette as table games and not gaming machines prior to those games being declared not to be gaming machines by regulations made pursuant to section 368 of the Act.
- (c) Whether to adopt the floor layouts in the form proposed (without identifying specifically what games must be played on particular tables), and if so, subject to what, if any provisos.

Section 11 and 12 considerations

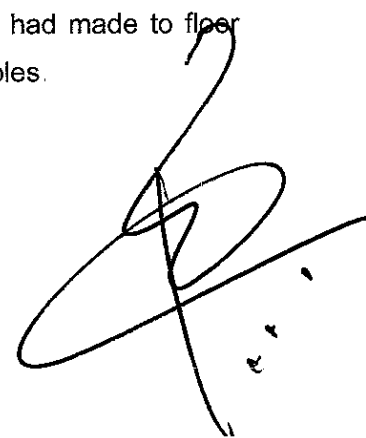
22. The Commission considered, in particular:
- (a) the effect of section 12(3)(a);
 - (b) whether rates of play was a potentially relevant factor in assessing potential for increase;
 - (c) establishing a player space baseline against which to measure increases in player spaces in accordance with section 12(2)(c);
 - (d) whether, on the facts, the proposal would give rise to an increase in opportunities.

Section 12(3)(a)

23. Section 12(3)(a) provides that opportunities for casino gambling are not increased by increases, in the Auckland Casino, that comply with the Order for the Variation of Conditions of Casino Premises Licence dated 6 December 2002. That Order amended condition A2 of the licence to allow the applicant to operate up to 1,647 machines and 110 gaming tables.
24. The applicant provided on request plans approved by the Authority on 7 November 2003 incorporating the maximum number of machines and tables (in fact, the approved plans showed 113 tables). The Commission accepted the advice of Wilson Harle that the transitional effect of section 12(3)(a) of the Act was, accordingly, no longer material and its effect spent. The maximum numbers for tables and machines specified in the Order is entrenched going forward in condition A2.

A large, stylized handwritten signature in black ink, located in the bottom right corner of the page. The signature is cursive and appears to be the name of a person, possibly a member of the Commission or the applicant.

25. The Commission was advised that, strictly speaking, the applicant was permitted and required to operate in accordance with the last layouts approved by the Authority. In response to enquiries by the Commission Secretariat, the applicant submitted a series of plans dated between March and May 2004 which it considered were the last approved floor layouts. There were as follows:
- (a) floor plans A1301D and A1500F approved by the Authority on 3 May 2004. The applicant advised that these relate to the gaming machine positions on Levels 2 and 3, and the table configuration for Pits 2 and 4 on the main gaming floor;
 - (b) unnumbered plans showing the Pit 3 table configuration, approved by the Authority on 16 April 2004;
 - (c) unnumbered plans showing main gaming floor table configuration approved by the Authority on 4 March 2004. The applicant advised that these were superseded by subsequent plans with the exception of Pit 1;
 - (d) unnumbered plans relating to Alto and Pit 10 dated 30 March 2004;
 - (e) unnumbered plans of Pit 10 approved on 4 March 2004.
26. To the extent that comparison was possible, it appeared that the existing Plan A configuration, which the applicant proposed that the Commission “ratify” was different from the approved layout. The applicant’s submissions on Plan A (summarised above) explain why.
27. Given the uncertainties, the Commission resolved in the circumstances to consider the new plans submitted by the applicant for approval on their face, and consider sections 11 and 12 issues by comparing the level of “opportunity” existing at 18 September 2003, to what the applicant now proposed.
28. For the future, the Commission wishes to clarify that it considers that approved layouts have a regulating or limiting effect on the casino operation. If the applicant wishes to depart from the configuration and game mix specified, it needs to obtain the approval of the Commission. Specifically, the Commission does not agree with the applicant’s assertion that, as long as it remained within the maximum numbers specified in the Authority’s Order, it did not require any approvals for the changes it had made to floor layout, the reinstallation of gaming machines, and the movement of tables.

A large, stylized handwritten signature in black ink, located in the bottom right corner of the page. The signature is highly cursive and difficult to decipher, but it appears to be a personal name.

Rates of play

29. The approach taken by the Commission to the interpretation of sections 11 and 12 is set out in its earlier decision (GC01/04) as follows:

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 effect 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 before the Commission.

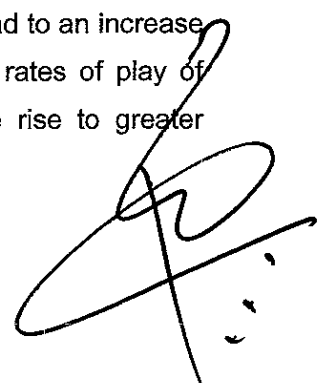
30. Section 12(2) identifies increases in table and machine numbers and player spaces as inherently likely to increase the opportunities for casino gambling and it is appropriate that these matters always be considered. Beyond this, the Commission has recognised that there may be other factors which, depending on the circumstances and taken overall, result in an increase in gambling opportunities. The Commission has expressed the view in decisions GC01/04 and GC01/05 that "consideration of other factors in a commonsense 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".

31. The Secretary submitted in relation to the application that:

Formulation of equating play spaces between table games as the single determinant as to whether there will be "an increase in the opportunities for casino gambling" may be too simplistic.

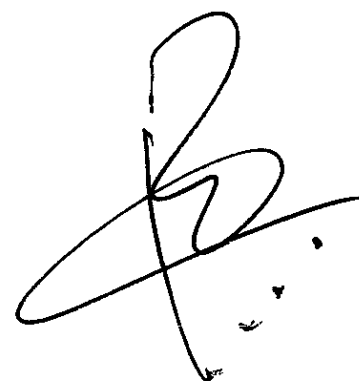
32. The Secretary noted that the Commission had the discretion to consider other factors, and suggested that one factor could be the relative speed of the games and the increased opportunity for player expenditure. The Secretary gave as an example the increased speed at which electronic Roulette was played compared to manual Roulette. The Commission was also advised independently by Wilson Harle that the Commission could form an opinion that opportunities for gambling could increase while player spaces remain constant, one example being where technology is introduced to increase rates of play.

33. The applicant made submissions in response to the Secretary's submissions and the independent advice received from Wilson Harle. These submissions (summarised and discussed below) were addressed primarily to the question of whether the introduction of electronic Roulette would, as a matter of legal interpretation or in fact, lead to an increase in opportunities. The submission did not address directly the relative rates of play of different table games, and the possibility that faster games may give rise to greater

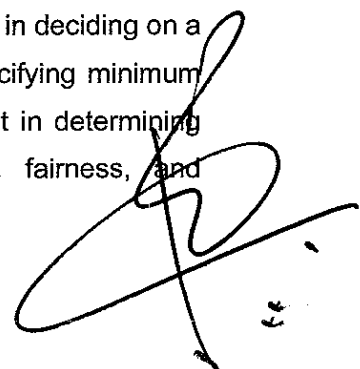


opportunities. No factual material was submitted by the applicant regarding the relative rates of play for different table games.

34. Counsel for the applicant submitted that:
- (a) increased speed/rate of play does not as a matter of legal interpretation constitute an increase in opportunities; and/or
 - (b) there was “no sound factual basis on which the Commission could reasonably conclude that the proposed introduction of electronic roulette will in fact constitute an increase”.
35. On the matter of legal interpretation, counsel's submissions are summarised as follows:
- (a) increased player expenditure or gambling turnover is not prohibited by section 11 and 12, and in any event, the applicant's experience is that increased speed of play does not necessarily lead to increased total play and gambling turnover;
 - (b) Parliament intended to prohibit a net increase of gambling activities. There is nothing in the statutory context or legislative history to suggest that Parliament intended to prohibit any net increase in the speed of play;
 - (c) speed of play is regulated under minimum standards for gambling equipment. The existence of express provisions indicates that sections 11 and 12 were not intended to cover speed;
 - (d) Parliament intended that a simpler largely numerical exercise was contemplated under section 12 when determining whether an increase arises;
 - (e) the requirement to consider speed of games would be practically unworkable, and the proposal to do so would therefore be inconsistent with well-established principles of statutory interpretation. Counsel acknowledged that different games have different speeds, but submitted that assigning a speed would be “impracticable, indeed impossible” because of variables including:
 - (i) number of players;
 - (ii) variation in player skill;
 - (iii) dealer experience and skill;
 - (iv) size of wagers;

A large, stylized handwritten signature in black ink, located in the bottom right corner of the page. The signature is cursive and somewhat abstract, with a prominent loop at the top and a long, sweeping stroke extending downwards and to the left.

- (v) use of technology; and
 - (vi) style of game;
- (f) increased speed does not mean increased player expenditure. The number of wagering opportunities is also relevant;
- (g) it would be necessary to consider not just the speed of different table games, but the speed of table games and machines when one is substituted for another;
- (h) it would be “stretching the meaning of “opportunities for casino gambling” well beyond a realistic and sensible interpretation if these words were to be construed as encompassing speed of play. Such a draconian unworkable result would require a very clear statutory intent, spelt out plainly and expressly in the statutory language. That is simply not the case”.
36. On the facts, counsel submitted that the proper comparison, if rates of play were taken into account, would be to compare the total game speed for the proposed mix, including Rapid Roulette, with the mix of games when section 11 and 12 came into force. This, it was submitted, would be “an impossible and meaningless exercise”. Counsel also submitted that the applicant did not agree with the estimated spin rate figures provided by the Secretary for Touchbet and manual Roulette and submitted that the average spin rate of manual Roulette was not materially different from that of electronic roulette.
37. The Commission agrees that the purpose of section 11 and 12 centres on gambling activities (actually opportunities) and not regulation of player expenditure. The Secretary’s submission was, however, that increased speed may result in increased **opportunity** for player expenditure, which is a different proposition.
38. The Commission has rejected previously the applicant’s submission that section 12(2) produces a closed list and the assessment of opportunities a “numerical exercise” limited to counting machine and table numbers and player spaces. It prefers to make an overall assessment of the effect of changes on casino gambling opportunity taking all matters into account that may have a commonsense bearing on the position.
39. Counsel for the applicant stated that Parliament did not intend rate of play to be considered under sections 11 and 12, as speed of play was regulated when games were approved. Speed of play may be relevant consideration for the Secretary in deciding on a one off basis, whether to approve games for use in a casino or in specifying minimum standards for gaming equipment. For example, speed may be relevant in determining whether approval is consistent with harm minimisation objectives, fairness, and

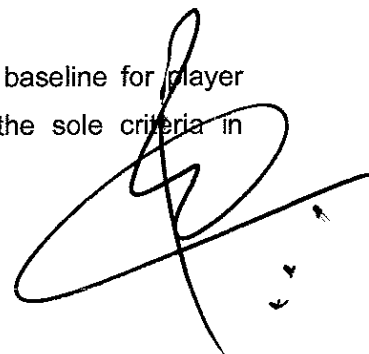


auditability etc. Whether or not casino gambling opportunities are increased upon the substitution of one game for another game is, however, a matter for the Commission to consider when gambling equipment is proposed to be introduced on to a casino floor. It is only then any potential for overall increase can be assessed, taking into account what the level of opportunity is, and whether the introduction of the equipment or game in question and any accompanying changes, affects the overall level of opportunities.

40. The Commission agrees with counsel that if rate of play is to be taken into account, the Commission is required to assess how the overall mixes compare. It also acknowledges that, determining whether and to what extent rates of play impact on opportunity will not be an exact science, due to the variables referred to by counsel for the applicant, eg number of players, dealer and player experience and skill etc. These uncertainties or variables are not of such magnitude that, in the opinion of the Commission, it is "practically unworkable, impossible and absurd" for the Commission to consider rates of play, as counsel for the applicant contends. Rates of play is considered by the Commission to be a potentially relevant factor when assessing any proposal in the round, taking into account all the circumstances.

Establishing a benchmark for player spaces

41. Section 12(2) specifically identifies that increases in player spaces may give rise to an increase in opportunity. The applicant advised the Commission that previously the Authority approved, under the Casino Control Act 1990, generic plans, without identifying the games which could be played on particular tables, or indicated in correspondence accompanying approved plans that the applicant was free to vary the games played.
42. To enable the Commission to consider the proposal, the applicant sought to establish a baseline position for player spaces (against which the potential for increase in player spaces could be measured) by establishing the game mix at the time sections 11 and 12 commenced on 19 September 2003. The applicant has determined from computer data that as at 18 September there were 93 tables active on the floor. The applicant also factored in Touchbet Roulette as a table game (this was introduced in November 2003) and the 15 games introduced in December 2003 when Play Casino was opened. One table was unaccounted for. On the basis of these games, and the 1,647 machines approved pursuant to the Authority's Order, the applicant calculated that the notional number of player spaces which existed or had been approved on 18 September 2003 was 3,911.
43. In the absence of better information, the Commission accepts this baseline for player space. But as noted above, player space is not accepted as the sole criteria in

A large, stylized handwritten signature in black ink, located in the bottom right corner of the page. The signature is cursive and somewhat abstract, with a prominent loop at the top and a long, sweeping stroke extending downwards and to the right.

considering whether the changed game mix gives rise to potential increase in opportunities.

Factual analysis

- 44 The facts to which the Commission had regard in considering the potential for increases in opportunities for casino gambling associated with the overall proposal included the following:
- (a) the number of tables and machines was at the permitted maximum specified in condition A2 of the venue licence;
 - (b) on the basis that all tables are fully operational, there would be an increase of nine player spaces from 3,911 in September 2003, to 3,920. (The applicant proposed addressing this by reducing two Black Jack tables to five box games, reducing player spaces by 12);
 - (c) comparing the proposed table game mix with that existing or approved as at September 2003 it was noted that:
 - (i) the number of Black Jack tables (the fastest) is reduced from 53 to 46;
 - (ii) the number of Caribbean Stud Poker tables (the slowest) is increased from nine to 10;
 - (iii) the number of Baccarat tables (second fastest) is increased from 17 to 24;
 - (iv) the number of Pai Gow tables (second slowest) is increased from three to four;
 - (v) there is no change to Moneywheel, Tai Sai and Touchbet;
 - (vi) the number of manual Roulette tables is reduced from 24 to 21;
 - (vii) electronic roulette games (Touchbet and Rapid Roulette) are increased from zero to two.
45. The Commission knew only the ranking of games in terms of speed, and did not have information about the relativity between games. On the information provided, the Commission did not consider it obvious, one way or the other, whether the change in game mix and the introduction of Rapid Roulette would result in an overall increase in the opportunities. Seven Black Jack games (the fastest) had been replaced by seven Baccarat games (the second fastest). Manual Roulette games had been reduced by three, and two games of electronic roulette introduced (the Secretary and the applicant

having differing views on the significance of this change in terms of game speed). Player spaces had increased by nine.

46. As a matter of overall judgment, and taking into account historical uncertainty about the game mix and configuration, the Commission decided that an increase did not arise. The Commission would expect any future applications relating to change to floor layout, including game mix, to address a broader range of factors, including rate of play, to enable the Commission to consider more exactly how sections 11 and 12 apply. As set out in its decision GC01/05, the Commission considers 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). Accordingly, any future applications should be prepared on the basis that all tables are fully operational.

Approval of Layouts incorporating Touchbet and Rapid Roulette

47. As an integral part of the application, it was necessary for the Commission to consider whether to approve floor layouts incorporating Touchbet and Rapid Roulette as table games not gaming machines. As a preliminary matter, the Commission considered whether Touchbet and Rapid Roulette constituted table games, as the application assumed.
48. The Commission was advised by Wilson Harle that:

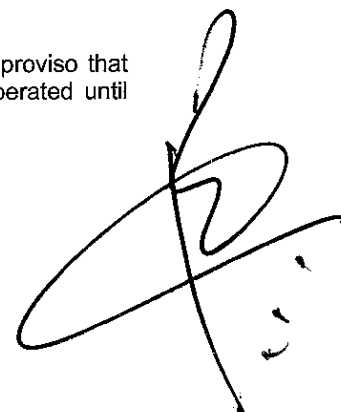
Rapid Roulette is a "gaming machine" as defined by the Gambling Act 2003. Plans for its introduction as a table game may have proceeded under a misapprehension as to its legal status. No regulation has been promulgated to declare Rapid Roulette to be not a gaming machine and otherwise it plainly fits the broad statutory definition. If so, the introduction of a Rapid Roulette table is, legally, the placement of 20 gaming machines in the location of what was a table game. This has implications both for layout and ratios.

The same situation applies to Touchbet Roulette, which is already in operation. It too is a "gaming machine" within the statutory definition.

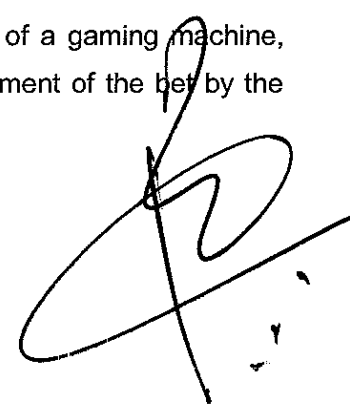
The consequences of each game having been declared by regulation not to be a gaming machine are complex:

- (a) Each table is deemed by section 6 of the Gambling Act 2003 to constitute as many gaming machines as there are player stations.
- (b) Until each table game is declared by regulation not to be a gaming machine, it cannot be used without significant alteration to the layout (because of the need to remove numerous other gaming machines to stay within both the maximum number permitted and maintain the 15:1 ratio) or possibly at all (neither game being apparently approved as a gaming machine).

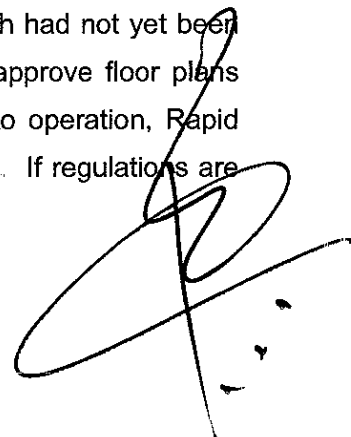
The recommended solution is to approve the proposed layout with the proviso that neither the Touchbet Roulette nor the Rapid Roulette tables can be operated until each game is declared by regulation not to be a gaming machine.



49. In response, the Secretary submitted that:
- (a) the Authority considered Touchbet to be a table game when it authorised it;
 - (b) the terms “table game” and “gaming machine” are not mutually exclusive, giving rise to the possibility of ambiguities;
 - (c) the Department is currently considering whether:
 - (i) electronic roulette falls within the definition of gaming machine in the Act;
 - (ii) regulations should be passed declaring it not to be a gaming machine;
 - (d) the Secretary has let the status quo remain – that Touchbet is deemed to be a gaming machine – until it resolves the above issues;
 - (e) if electronic roulette is a gaming machine, it will have broader implications, eg the definition may also apply to licence conditions, minimum standards, MOS and game rules that refer to gaming machines. These were not designed with electronic roulette in mind.
50. The applicant submitted a legal opinion dated 24 August 2004 advising it on the probability of a Court finding Touchbet Roulette to be a gaming machine. The applicant was advised by its counsel that “there is no doubt that electronic roulette falls within the literal wording of paragraphs (a) and (b) of the definition of gaming machine”. This was because it is a device partially electronically operated, and adapted or designed and constructed for use in gambling.
51. Counsel was of the view however, that if the Court were to consider whether Touchbet Roulette was a gaming machine it would be more likely to prefer a “purposive approach” to the interpretation of the definition, involving an assessment by the Court of what kinds of devices the definition was intended to cover. Counsel was of the opinion that Parliament would not have intended the definition to cover Touchbet because:
- (a) the constraints in the Act relating to gaming machines were not intended to apply to items such as automatic card shufflers and other ancillary equipment used in table games;
 - (b) electronic roulette did not have the fundamental features of a gaming machine, namely the chance determination of outcomes, and placement of the bet by the player rather than a third person;

A large, stylized handwritten signature in black ink, located in the bottom right corner of the page. The signature is cursive and appears to be a name, possibly 'R. J. ...', with a long horizontal stroke extending to the right.

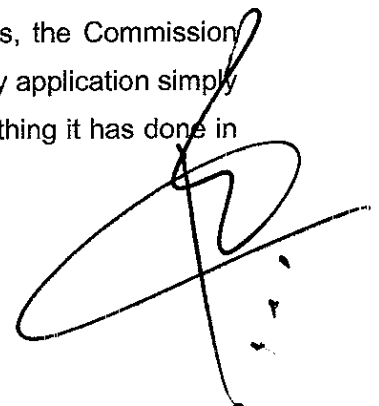
- (c) if electronic roulette was a gaming machine it would be able to be installed in class 4 venues as well as casinos, and Parliament could not have intended this.
52. The Commission agrees with counsel for the applicant and the advice of Wilson Harle; based on its understanding of the two games, Touchbet and Rapid Roulette are plainly within the definition of gaming machine. The Commission did not accept that this outcome was so “simplistic” or “absurd” that the Courts would be likely to adopt a different interpretation of “gaming machine” in order to exclude electronic roulette
53. The Commission considers that the purpose of the broad statutory definition of gaming machine, with provision for exclusion by regulation, was to ensure that devices did not slip through the regulatory net on marginal definitional arguments. The purpose is not met by applying the definition in a restricted sense. Any mischief arising from unintentional capture of a particular device is intended to be cured by the exclusion by regulation expressly provided for.
54. The Commission considers that the definition, and its application to electronic roulette, can be interpreted sensibly as it stands without a reading down of the words. The Commission had particular regard to paragraph (e) of the definition, which provides a specific mechanism by which devices could be excluded from the definition (by declaration under regulations made under section 368) if for practical or other reasons inclusion was not appropriate. The Commission considered that Parliament’s intent was to cast the net broadly in terms of the definition, in the knowledge that a mechanism existed to exclude certain devices, as necessary and appropriate. The Commission does not take a view on whether or not it is appropriate or not for Touchbet and Rapid Roulette to be excluded from the definition of gaming machine by way of regulations. That is a matter for the Executive.
55. As Touchbet has been in operation since November 2003, the Commission considered that it should be able to continue to operate, at least temporarily, without requiring removal of other gaming machines to bring the operator within permitted machine maximums and ratios, until such time as the position could be clarified and rectified. For this reason, the Commission deemed Touchbet to be a table game for the purposes only of licence conditions relating to machine and table numbers and ratios.
56. The Commission was not prepared to deal with Rapid Roulette, which had not yet been installed and operated, in the same way. It was only prepared to approve floor plans incorporating Rapid Roulette, subject to the requirement that prior to operation, Rapid Roulette must be declared by regulation not to be a gaming machine. If regulations are

A large, stylized handwritten signature in black ink, located in the bottom right corner of the page. The signature is highly cursive and loops around, partially overlapping the text of paragraph 56.

not forthcoming, it will be necessary for the operator to make changes to the existing machine numbers and ensure that maximums and specified ratios are achieved.

Form of approval

57. The applicant proposed that the Commission approve the configuration of machines and tables and the game mix, but that the applicant be permitted to operate the specified table games (up to the permitted maximums for each game) interchangeably in the approved configuration. The Commission considered this approach in decision GC01/05. It is satisfied that, with the provisos adopted in that decision, the approval of floor layouts on this basis will ensure that any potential for increases in opportunity associated with change in game mix can be managed and that security and surveillance arrangements will not be compromised.
58. The applicant applied for approval of Plan A which was described as reflecting the existing floor layout as it existed at 8 December 2004. The Commission is advised by the Inspectorate that as at 4 February 2005 the proposed reconfiguration of Level 2 shown in Plan B is fully implemented with the exception of the removal of two Black Jack tables and the installation of Rapid Roulette. The Commission is advised by the Inspectorate that as at 4 February 2005 the proposed reconfiguration of Level 3 shown in Plan C has been partially implemented. All the tables shown in the International VIP Room have been installed with the exception of two Mini Baccarat. Four Mini Baccarat remain in Pit 10, for removal and replacement with 12 gaming machines.
59. Given that the changes are well advanced, the Commission sees no purpose in ratifying what is essentially a past configuration described in Plan A. It resolved to approve what is or is expected to be the current layout, which is B and C, and to approve these on the basis that they comprise a complete set of floor layout plans. If and when applications to alter the floor layout are made in future, the applicant should submit a new set of floor layouts for all gambling areas in the casino. In this way, the Commission and the Inspectorate will always have an up to date set of floor plans, and the confusion will be avoided which arises around sequential and partial amendments to floor layouts (demonstrated by the plans submitted by the applicant as reflecting the last approved layout).
60. The applicant is required to comply with Plans B and C, and must effect the removal of tables not shown in those Plans. With regard to any future changes, the Commission cautions the applicant that it will not feel constrained in considering any application simply because of any inconvenience for the applicant in having to undo anything it has done in advance of approval.

A large, stylized handwritten signature in black ink, located in the bottom right corner of the page. The signature is written over the text of paragraph 60 and extends into the margin.

Decision of Commission

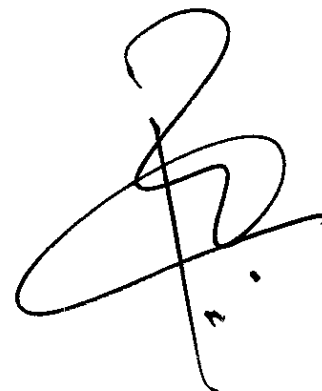
61. The Commission decided unanimously that the proposal was consistent with the Act, and to approve the floor layouts and game mix shown in Plans B and C (**attached** to this decision) subject to the following conditions and requirements:

- (a) Touchbet Roulette is considered by the Commission to constitute a gaming machine in accordance with section 4 of the Act. For the purposes of licence conditions A2 of the venue licence and condition 11.2 of the operator's licence (relating to permitted numbers of machines and tables, and the approved ratio between the two) Touchbet is deemed to be a table game for a six month period from the date of this decision or until such time as a regulation is made under section 368 declaring it not to be a gaming machine, whichever is the earlier;
- (b) Rapid Roulette can be operated as a table game only if and when a regulation is made under section 368 declaring it not to be a gaming machine;
- (c) subject to the conditions specified in (a) and (b) above, the following games may be operated under Plans B and C:

Black Jack – up to 46 games;
 Roulette – up to 21 games;
 Caribbean Stud Poker – up to 10 games;
 Midi Baccarat – up to 17 games;
 Mini Baccarat – up to seven games;
 Pai Gow – up to four games;
 Moneywheel – up to two games;
 Tai Sai – up to one game;
 Touchbet Roulette – up to one game;
 Rapid Roulette – up to one game;

With the exception of Touchbet and Rapid Roulette, the foregoing list refers to manual versions of the games specified, and does not extend or permit the introduction of electronic versions or any new electronic aid and enhancements to existing games. If any electronic version, aid or enhancement is sought to be introduced, an application by the licence holder is required for approval of a revised floor layout;

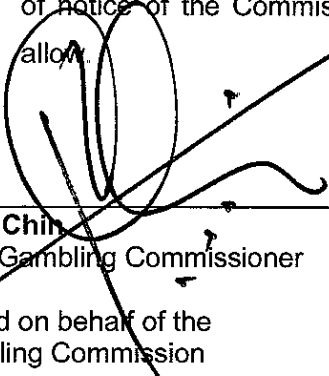
- (d) CCTV coverage of tables must as a minimum provide for:
 - (i) Pan-Tilt-Zoom camera coverage of all tables;



- (i) monitoring of Roulette and Midi Baccarat games by a minimum of two fixed cameras; and
 - (iii) monitoring of Black Jack and Caribbean Stud Poker by a minimum of one fixed camera;
- (e) 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 the lodged plan is maintained up to date.
62. The Commission made an interim decision dated 20 December 2004 on the application by the applicant relating to the floor layout in the Pacific Room at SKYCITY Auckland casino. The Commission did not consider it necessary to make a further decision on Plan A submitted as part of that application. The proposal is subsumed within the wider SKYCITY Auckland floor layouts, approved pursuant to this decision.

Right of appeal

63. 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

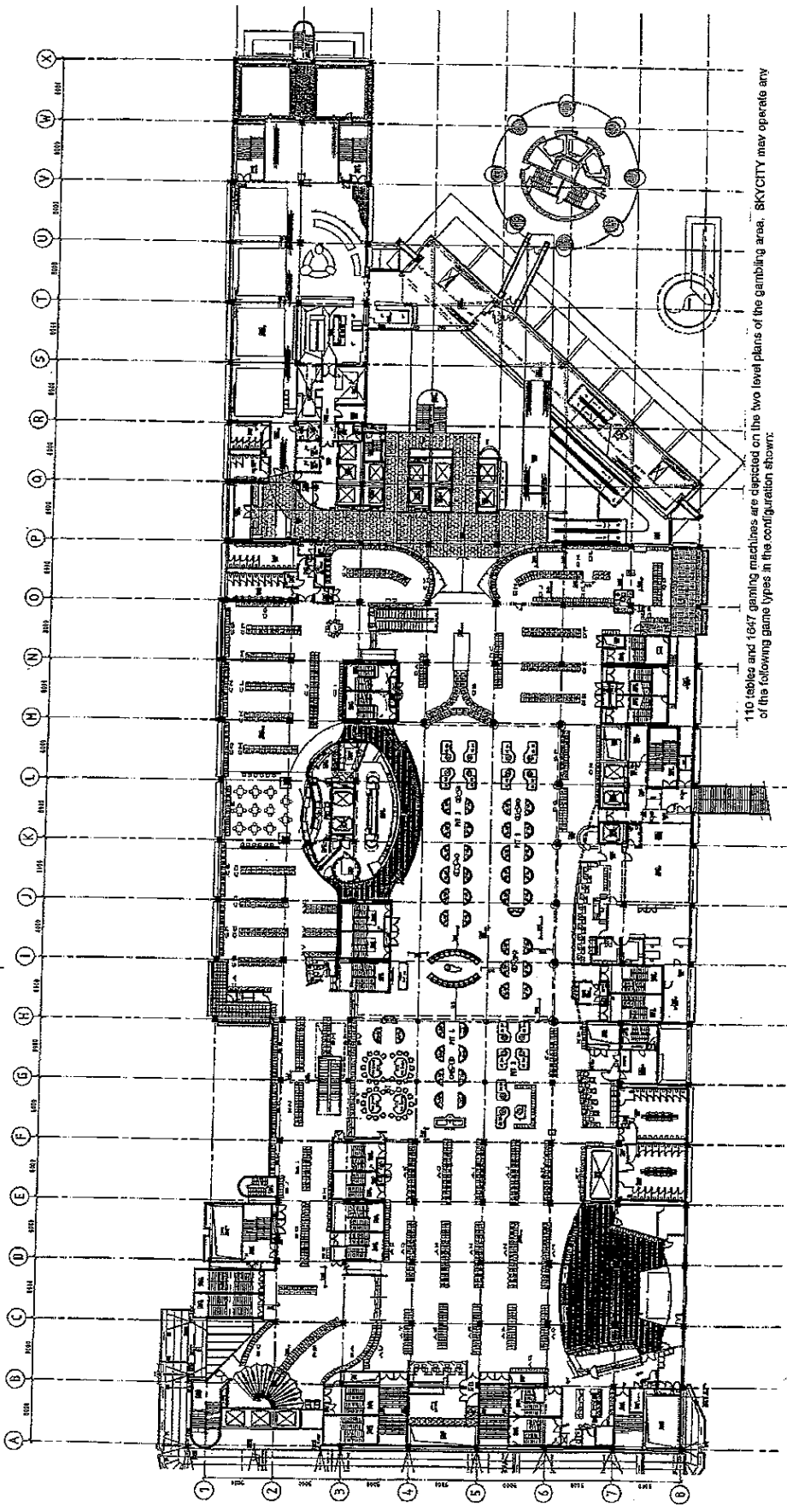
 allow.

Peter Chin
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

8 February 2005

B



110 tables and 1647 gaming machines are depicted on the two level plans of the gaming area. SKYCITY may operate any of the following game types in the configuration shown:

- Black Jack up to 48 games
- Roulette up to 24 games
- Caribbean Stud Poker up to 10 games
- Mini Baccarat up to 17 games
- Mini Baccarat up to 7 games
- Pat Gow up to 4 games
- Tai Sai up to 1 game
- Money Wheel up to 2 games
- Touchbet Roulette up to 1 game
- Rapid Roulette up to 1 game



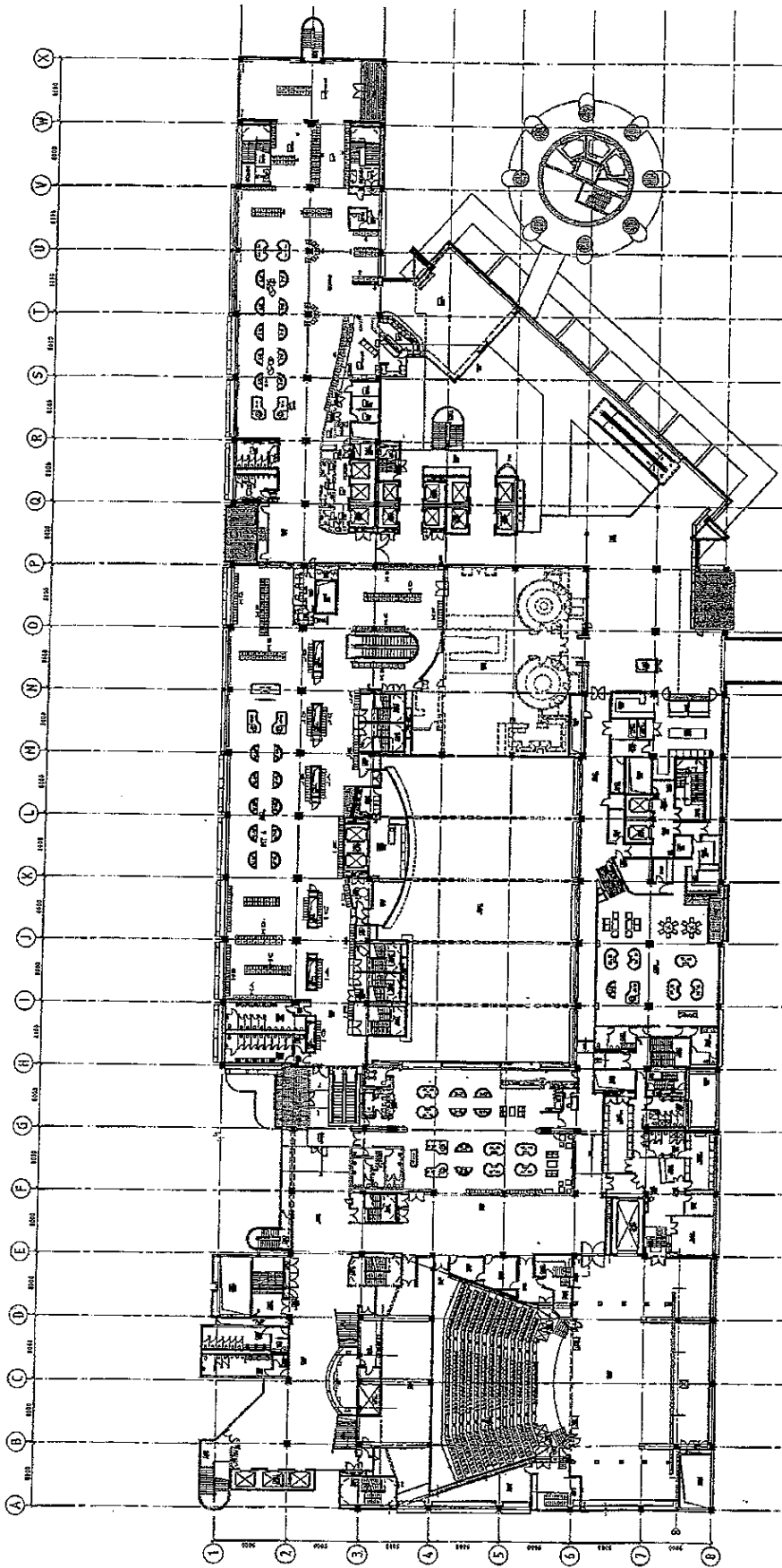
Totals 110

Craig Craig Moller ARCHITECTS
 Craig Craig Moller Architects Ltd
 Level 23 West Park
 3 Broad St, PO Box 10589
 Auckland, New Zealand
 Telephone: 09 337 0688
 Email: ccm@ccmarchitects.co.nz
 WWW.CCMARCHITECTS.CO.NZ

SKY CITY ENTERTAINMENT GROUP
 Members Club and Deck
 5091 A-1500V Vb

PROPOSED FLOOR PLAN
LEVEL 2 MAIN GAMING
STAGE TWO

DATE: 10/10/2011
 DRAWN: [Name]
 CHECKED: [Name]
 SCALE: 1:1000
 PROJECT: SKYCITY ENTERTAINMENT GROUP
 SHEET: 5091 A-1500V Vb



110 tables and 1647 gaming machines are depicted on the two level plans of the gambling area. SKYCITY may operate any of the following game types in the configuration shown:

- Black Jack
- Roulette
- Caribbean Stud Poker
- Mini Baccarat
- Mini Baccarat
- Pai Gow
- Tai Sai
- Money Wheel
- Touchbet Roulette
- Rapid Roulette

LEVEL THREE GAMING
11020

- up to 46 games
- up to 21 games
- up to 10 games
- up to 17 games
- up to 7 games
- up to 4 games
- up to 1 game
- up to 2 games
- up to 1 game

CraigCraigMoller ARCHITECTS
 CRAIG CRAIGMOLLER ARCHITECTS LTD
 Level 15 West Plaza
 Auckland, New Zealand
 Telephone 64 9 257 0686
 Fax 64 9 257 0699
 www.craigcraigmoller.co.nz

SKYCITY
 ENTERTAINMENT GROUP
 Members Club and Deck

PROJECT NO. 11020

DATE: 2011

110

PROPOSED FLOOR PLAN
 LEVEL 3 - GAMING LAYOUT

5091 A 1307K K

C

IN THE MATTER of the Gambling Act 2003
AND of an application by
SKYCITY AUCKLAND LIMITED to revise
gambling floor layouts

BEFORE THE GAMBLING COMMISSION

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

Date of Order: 17 February 2005

ORDER CORRECTING ERROR IN DECISION

It has been drawn to the Commission's attention that condition (d) of its decision GC02/05 contains an error as a result of a drafting oversight. The Commission's intention was to adopt the Secretary's recommendations relating to fixed camera requirements for various table games. In drafting the condition, the Gambling Commission omitted to include all the games listed by the Secretary. The Gambling Commission hereby amends condition (d) of its decision GC02/05, relating to CCTV coverage of gaming tables, in the manner set out in the Schedule to this Order.

It is also noted that paragraph 49(d) of its decision, summarising the Secretary's submissions, refers incorrectly to "gaming machine" rather than "table game". The Gambling Commission hereby amends paragraph 49(d) of its decision GC02/05 in the manner set out in the Schedule to this Order.



Peter Chin
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

17 February 2005

SCHEDULE

Delete paragraph 61(d) of decision GC02/05 and substitute the following:

- (d) CCTV coverage of tables must as a minimum provide for:
 - (i) Pan-Tilt-Zoom camera coverage of all tables;
 - (ii) monitoring of all table games by a minimum of one fixed camera; and
 - (iii) monitoring of Roulette, Midi Baccarat, Craps tables, Tai Sai and Moneywheel and by a minimum of two fixed cameras.

Delete paragraph 49(d) of decision GC02/05 and substitute the following:

- (d) the Secretary has let the status quo remain – that Touchbet is deemed to be a table game – until it resolves the above issues.

