

IN THE MATTER of the Gambling Act 2003
AND of an application by
SKYCITY AUCKLAND
LIMITED to construct a
smoking deck and wind
lobby

BEFORE THE GAMBLING COMMISSION

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

Date of Application: 23 December 2005

Date of Decision: 11 February 2005

Date of Notification of Decision: **24** February 2005

DECISION

**ON AN APPLICATION BY SKYCITY AUCKLAND LIMITED
TO CONSTRUCT A SMOKING DECK AND WIND LOBBY**

Application

1. SKYCITY Auckland Limited (the "**applicant**") applied to the Gambling Commission (the "**Commission**") under section 139 of the Gambling Act 2003 (the "**Act**") to:
 - (a) amend condition A2 of its casino venue licence by adding a reference to the Commission; and
 - (b) grant approval for the construction of a smoking deck and wind lobby pursuant to sections A2 and I1 of its casino venue licence.
2. At the time the application was made, the applicant already had seven smoking decks, approved by the Casino Control Authority (the "**Authority**") on 13 February 2004. In decision GC05/04, the Commission excluded the decks (and associated wind lobbies) from the designated gambling area to prevent these from being used for gambling.

3. The proposed deck is understood to be approximately 5x3 metres in area and is to be located at the south end of Level 2 of the casino premises. The proposed wind lobby, leading on to the deck, is within the designated gambling area. The deck is outside the gambling area.
4. The following drawings were submitted as part of the application:
 - Drawing No A-1200 Revision A (showing general area for development)
 - Drawing No A-1201 Revision A (showing deck and wind lobby)
 - Drawing No A-1501 Revision A (a detailed drawing of deck and machines in immediate vicinity)
 - Drawing No A-1502 Revision B (a detailed drawing of deck and wind lobby area)
 - Drawing No A-1502 Revision C (showing structural layout of deck and wind lobby).

Key issues

5. The principal issues for consideration of the Commission included:
 - (a) whether it was appropriate for the Commission to adopt the powers formerly exercised by the Authority under condition A2;
 - (b) whether the proposal complied with the statutory criteria set out in section 139(2) of the Act; and
 - (c) whether it was necessary to exclude the wind lobby from the designated gambling area.

Licence conditions

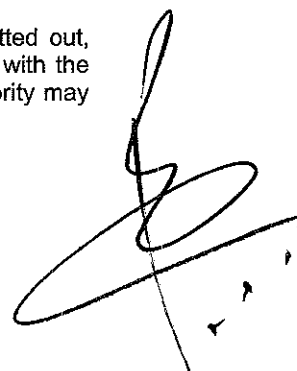
6. Condition I1 of the venue licence (as amended by the Commission by decision GC03/04) provides as follows:

- I1 The gaming area of the casino, areas in which money counting, surveillance, storage, and other activities related to the conduct and playing of games are carried on, and the facilities provided therein shall not be altered or extended in any way without the approval of the Commission.

7. The relevant part of condition A2 provides as follows:

Casino complex to be constructed, fitted out and operated as per application

- A2 The casino complex shall be designed, developed, constructed, fitted out, commissioned for operation and operated generally in accordance with the application of the licence holder or with such changes as the Authority may from time to time approve.



Statutory criteria

8. Sections 139 and 140 of the Act apply to the proposed variation of condition A2. The application of these sections is discussed in earlier Commission decisions

Submissions by the applicant

9. The applicant submitted that:
- (a) the new deck will only be accessible from the main gaming floor and would provide no opportunities for unauthorised access to the gambling floor;
 - (b) the proposal will not increase opportunities for casino gambling, as there is no change to the numbers of tables or machines (other than a temporary reduction in machine numbers while the facility is under construction) or to the designated gambling area;
 - (c) the wind lobbies to other decks are excluded from the gambling area. The applicant was not aware of any specific requirement or desire for wind lobbies to be excluded. It had not applied to vary the designated gambling area, but had no objection if the Commission wished, at its own initiative, to exclude the wind lobby;
 - (d) construction of the deck and the wind lobby would involve the removal of a bank of machines. The applicant advised that it would apply in due course for a new floor plan configuration.

Submissions by the Secretary

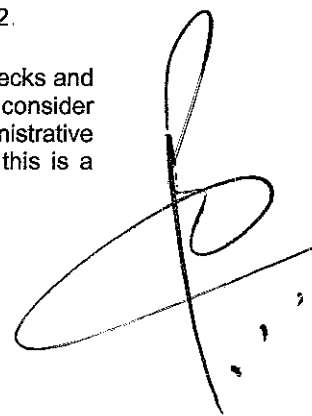
10. The Secretary submitted that it had no objection to the application for approval of the deck and wind lobby. The Secretary advised that:

The Gambling Inspector has discussed the physical changes to the gambling area with casino management and determined that any changes do not increase risks of unauthorised access or change to the level of gambling that is currently offered by the casino.

11. The Secretary made further submissions on the proposal to amend condition A2 stating that:

The Department has no objection to the proposed amendment of condition A2.

The Department has already provided comment on the subject of smoking decks and is not opposed to an administrative approval being granted. However, we consider that it is worthwhile exploring some mechanism whereby the detail of administrative approvals may be recorded against relevant licence conditions. Possibly this is a matter to consider in the Commission's general review of licence conditions



Analysis

12. The application was originally made for approval under condition I1 only. Condition I1 relates only to changes within the gambling area, and the smoking deck is outside this. The Commission Secretariat enquired of the applicant whether it was necessary for it also to obtain approval for the proposal under condition A2, relating to the construction of the casino complex. It was noted that the Authority had approved the earlier smoking decks (together with the relocation of the hard count room) under both conditions A2 and I1.
13. The applicant's response was that approval was not necessary under condition A2, as the construction of the deck was "generally in accordance" with its original application to construct and operate the casino. Taking a cautious approach, the applicant lodged a supplementary application seeking the amendment of condition A2 (to provide the Commission with the same powers formerly exercised by the Authority) and approvals under that condition.
14. When lodging the supplementary application, the applicant made the further submission that amendment of condition A2 was unnecessary, as the Commission assumed the powers of the Authority under licence conditions. The applicant stated that it remained "of the view that the Commission's refusal to treat references to "Authority" in various licence conditions (including A2) as being references to the Gambling Commission is incorrect". The earlier submissions of the applicant on this point have been considered and rejected by the Commission in decision GC02/04 for the reasons set out there.
15. Regarding the proposal to substitute "Commission" for "Authority" in condition A2, the Commission noted that in previous decisions it had accepted that it could make conditions which contemplated a level of administrative approval. It was recalled that the Commission had indicated in those decisions that it did not consider its power to provide such conditions to be unconstrained. It had been determined by the Commission that in any given instance, the need to give primacy to statutory requirements (including consultation requirements with the Secretary and affected parties) needed to be balanced by the need for the Commission to operate efficiently.
16. In the circumstances, and pending a general review of licence conditions, the Commission determined it to be appropriate to provide itself with the same approval powers exercised by the Authority in relation to condition A2. The Commission noted in particular that:
 - (a) it was anticipated that the design of the casino premises may need to be revised from time to time, and it may therefore be appropriate to provide an approval mechanism which did not involve amendment of the licence conditions in all

circumstances. This was consistent with the efficient administration of the Commission's functions; and

- (b) the Commission had amended similar licence conditions in other venue licences for the Christchurch and Dunedin casinos (decisions GC06/04 and GC07/04, respectively).
17. The Commission noted that the Secretary had no objections to the proposal. In respect of section 139(2) criteria, it was noted in particular that the construction of the wind lobby and smoking deck:
- (a) was unlikely to lead to any increased risk of unauthorised access by underage persons; and
 - (b) would not give rise to an increase in opportunities for casino gambling as the deck was outside the gambling area.
18. The Commission determined that it was not necessary in the circumstances to exclude the proposed wind lobby from the gambling area. For the avoidance of doubt, the Commission resolved that gambling activities should be prohibited in the area occupied by the wind lobby.

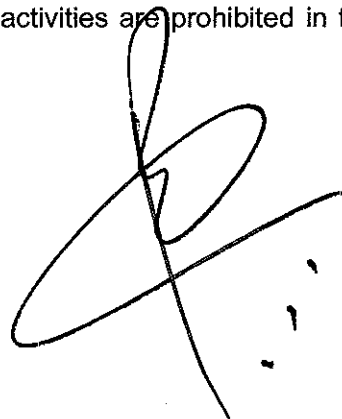
Decision

19. The Commission decided:
- (a) that there were no parties affected by the amendment of condition A2;
 - (b) to amend condition A2 as follows:

Casino complex to be constructed, fitted out and operated as per application

The casino complex shall be designed, developed, constructed, fitted out, commissioned for operation and operated generally in accordance with the application of the licence holder, subject to such changes as the Authority has approved, and which the Commission may approve from time to time.

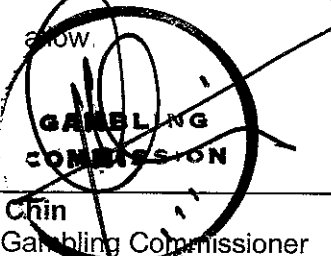
- (c) pursuant to conditions I1 and A2, to grant approval to the construction and use of the wind lobby and smoking deck, in accordance with the plans submitted as part of the application, and on condition that gambling activities are prohibited in the area occupied by the wind lobby.



Right of appeal

20. 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

show.



**GAMBLING
COMMISSION**

Peter Chin
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

24 February 2005