

IN THE MATTER of the Gambling Act 2003

AND on an application by
**SKYCITY CASINO
MANAGEMENT LIMITED**
to vary a condition in its
casino operator's licence
and for approval of an
additional EFTPOS
machine; and

an application by
**QUEENSTOWN CASINOS
LIMITED** to revoke a
condition of its casino
venue licence

BEFORE THE GAMBLING COMMISSION

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

Date of Application: 23 February 2005

Date of Decision: 8 April 2005

Date of Notification ~~22~~ April 2005
of Decision:

DECISION

ON AN APPLICATION BY SKYCITY CASINO MANAGEMENT LIMITED TO:

(A) VARY A CONDITION IN ITS CASINO OPERATOR'S LICENCE; AND

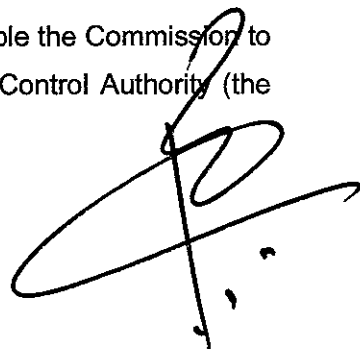
(B) APPROVE AN ADDITIONAL EFTPOS MACHINE; AND

**AN APPLICATION BY QUEENSTOWN CASINOS LIMITED TO REVOKE A
CONDITION OF ITS CASINO VENUE LICENCE**

Application

1. SKYCITY Casino Management Limited ("**SCML**") applied to the Gambling Commission (the "**Commission**") under section 139 of the Gambling Act 2003 (the "**Act**"):

- (a) to vary condition 11.1 of its casino operator's licence to enable the Commission to exercise powers under it formerly available to the Casino Control Authority (the "**Authority**"); and

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(b) for approval under condition 11.1 (as varied) for the installation of an additional non-cash dispensing EFTPOS facility in the bar area.

2. Queenstown Casinos Limited ("**QCL**") applied to revoke condition 1.9 of its casino venue licence, which is identical to condition 11.1 SCML's operator's licence.

Statutory criteria

3. Sections 139 and 140 of the Act apply to the proposed variation of condition 11.1 of the operator's licence and the revocation 1.9 of the venue licence. The application of sections 139 and 140 have been discussed in earlier Commission decisions.
4. Conditions 11.1 of the operator's licence and 1.9 of the venue licence are identical and state as follows:

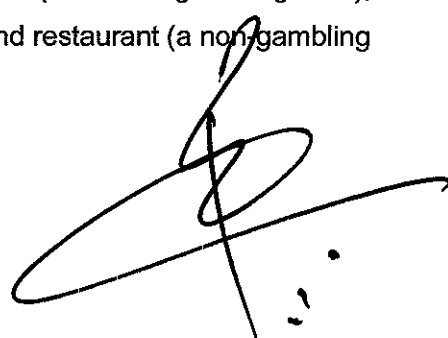
No automatic teller machine, EFTPOS facility, or device of a similar nature shall be installed within the casino premises unless approved by the Authority. The Authority's approval shall be revocable at its discretion and shall be subject to such conditions as the Authority may from time to time impose.

Submissions by the applicant

5. In its covering letter, SCML advised that its application to vary condition 11.1 was submitted on a "without prejudice" basis. This was because it considered it unnecessary for licence conditions to be amended to provide the Commission with powers previously exercised by the Authority.
6. SCML submitted that the variation of condition 11.1 continued the arrangements established by the Authority, and permitted the transition of licence conditions from one regime to another.
7. SCML proposed two alternatives for varying condition 11.1, either substituting the word "Authority" with "Gambling Commission" or adopting the following reformulation of condition 11.1:

The licence holder must ensure that there is no automatic teller machine, EFTPOS facility or device of a similar nature available within the casino premises unless approved by the Gambling Commission. The Gambling Commission's approval shall be revocable at its discretion and may be subject to such conditions as the Gambling Commission may from time to time impose.

8. Within the casino, there is currently one ATM in the casino foyer (outside the gambling area), two cash dispensing EFTPOS facilities at the cash desk (within the gambling area), and two non-cash dispensing EFTPOS facilities in the bar and restaurant (a non-gambling area).

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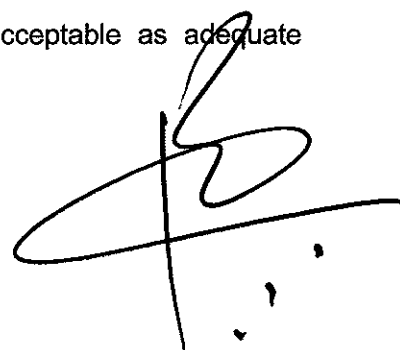
9. The bar is being extended as part of changes to layouts notified to the Commission as part of decision GC01/05. This will create a new point of sale, requiring an additional EFTPOS facility. SCML confirmed that this would be non-cash dispensing.

Submissions by the Secretary

10. The Secretary supported the second rewording of licence condition 11.1 proposed by the applicant. The Secretary supported the proposal to revoke condition 1.9 of QCL's venue licence on the basis that it is duplicative.
11. The Secretary noted that the installation of a third EFTPOS machine in the bar area did not breach any specific provision of the Act or the Gambling (Harm Prevention and Minimisation) Regulations 2004.

Analysis

12. SCML submitted its application to vary condition 11.1 on a "without prejudice" basis. The Commission wishes to clarify for the future what is, and is not, acceptable usage of "without prejudice" in the context of applications to the Commission.
13. In circumstances where the Commission's ruling on a matter is under challenge, it is acceptable (although possibly unnecessary) to indicate that an application made in the interim (or a submission made in an application) is without prejudice, in order to make clear that the applicant is not resiling from its challenge.
14. The applicant is currently using "without prejudice" in other circumstances, including in this application, which are not acceptable. The Commission has ruled previously that it does not, as a matter of "necessary implication" assume the powers of the Authority under existing licence conditions and that amendment of those licence conditions is necessary. In making its application on a "without prejudice" basis, SCML is understood simply to be indicating its ongoing disagreement with a ruling that has not been subject to challenge, with no new argument being advanced. This is discourteous and inappropriate.
15. No objection has been raised by the Secretary to the amendment of condition 11.1 or the proposed addition of an EFTPOS facility. The Commission notes that it will be non-cash dispensing, and will be located in a non-gambling area.
16. The revocation of condition 1.9 of QCL's venue licence is acceptable as adequate controls exist under the operator's licence.

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Decision of the Commission

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

- (a) there are no other parties affected by the applications to vary condition 11.1 and revoke condition 1.9;
- (b) to vary condition 11.1 of the operator's licence to read:

The licence holder shall ensure that there is no automatic teller machine, EFTPOS facility or device of a similar nature available within the casino premises unless approved by the Authority (prior to 1 July 2004) or the Commission. Approval shall be revocable at the discretion of the Commission and shall be subject to such conditions as already imposed by the Authority or which may be imposed by the Commission from time to time.

- (c) to approve the installation of a third EFTPOS terminal in the bar area, as proposed, on condition that it is non-cash dispensing;
- (d) to revoke condition 1.9 of the venue licence.

Right of appeal

18. 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 the High Court may allow.



Peter Chin
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

22 April 2005