


IN THE MATTER of the Gambling Act 2003
AND on a proposal by the Gambling Commission to vary licence conditions attached to the venue licence for the Auckland casino

BEFORE THE GAMBLING COMMISSION

Members: G L Reeves (Chief Gambling Commissioner)
L M Hansen
D C Matahaere-Atariki
W N Harvey

Date of Proposal: 26 January 2016

Date of Decision: 11 March 2016

Date of Notification of Decision:  March 2016

DECISION ON A PROPOSAL BY THE GAMBLING COMMISSION TO VARY LICENCE CONDITIONS ATTACHED TO THE VENUE LICENCE FOR THE AUCKLAND CASINO

Introduction

1. In decision GC21/15, the Commission approved a number of applications by SKYCITY as a result of the New Zealand International Convention Centre Act 2013 ("**NZICCA**") which brought into effect certain regulatory concessions set out in the NZICC Agreement between SKYCITY and the Crown. Within those approvals, the Commission considered construction and design changes proposed by SKYCITY Auckland Limited ("**SCAL**") for Level 7 of the Grand Hotel. SCAL did not require Commission approval for these changes because the licence conditions did not then impose controls on that area as it did not form part of the casino venue as it was defined in the casino venue licence. SCAL sought the Commission's approval for the changes on a precautionary basis because it intended to seek an extension of the defined Gambling Area to include Level 7 of the Grand Hotel after the site on which it sat became part of the casino venue pursuant to the NZICCA.
2. In its written decision, the Commission considered the construction and design changes proposed for Level 7 of the Grand Hotel and was satisfied that they would not have an adverse impact on any of the matters set out in licence condition 7(a)-(e) of SCAL's venue licence, if that condition were applicable to Level 7.



3. The Commission went on to note that it intended to propose amendments to conditions 6 and 7 of the Auckland casino venue licence, on its own initiative, under section 139(1)(e) of the Act, to incorporate Level 7 of the Grand Hotel as an area requiring Commission approval prior to any construction and design changes taking place.
4. After the decision was issued, and having considered the matter in more detail, the Commission formed the view that amendments should also be proposed to conditions 4 and 5 to incorporate Level 7 of the Grand Hotel.
5. By letter dated 26 January 2016, the Commission proposed, on its own initiative, under section 139(1)(e) of the Gambling Act 2003 (the "**Act**"), to vary licence conditions 4, 5, 6 and 7 of the licence conditions attached to the venue licence held by SCAL for the Auckland casino, with the intent of incorporating Level 7 of the Grand Hotel as an area requiring Commission approval prior to any construction and design changes taking place, and otherwise generally extending the controls that it exercised over the original casino site to the site licensed pursuant to the NZICCA.
6. Section 140 of the Act requires the Commission to notify the Licence Holder, the Secretary for Internal Affairs (the "**Secretary**") and other potentially affected persons of the proposed changes. As no other potentially affected party were identified, the Commission notified the Licence Holder and the Secretary, receiving submissions from both.

Licence conditions

7. Licence conditions 4, 5, 6 and 7, with the proposed variations shown in mark-up, are as follows:

Auckland venue licence

4. **Casino Venue** means the area defined as ~~constituting the casino premises in this licence~~ in Schedule 1 of NZICCA under the heading "Schedule 6 of Agreement, Increase in Area of Casino Venue".

Original Casino Site means all of the land and buildings bounded by Hobson Street, Wellesley Street West, Federal Street and Victoria Street West, Auckland, New Zealand, being the parcels of land comprising:

- (i) All that parcel of land containing 6342 square metres more or less being Lot 1 Deposited Plan 105225 and being Allotments 23, 24, 25, 33, 34, 35 and 43 and part Allotments 19, 20, 21 and 22, Section 22 City of Auckland (Certificate of Title 58A/312 North Auckland Registry);
- (ii) All that parcel of land containing 5513 square metres more or less being Lot 1 Deposited Plan 108126 and being Allotments 26, 27, 28, 29, 30, 31, 32, 36, 37, 38, 39, 40, 41, 42 and part Allotments 12 and 13, Section 22 City of Auckland (Certificate of Title 60C/167 North Auckland Registry);

- (iii) All that parcel of land containing 834 square metres more or less being Part Allotment 13, Section 22 City of Auckland (Certificate of Title 31C/1327 North Auckland Registry).

NZICCA means the New Zealand International Convention Centre Act 2013.

NZICCA Additional Site means all of the land and buildings situated at 86 Federal Street, 65-71 Federal Street and 109-125 Albert Street, Auckland, being the parcels of land comprising:

- (i) All that parcel of land containing 564 square metres more or less being Lot 2 Deposited Plan 52242 (Certificate of Title NA2C/900 North Auckland Registry);
- (ii) All that parcel of land containing 278 square metres more or less being Part Allotment 7, Section 22 City of Auckland (Certificate of Title NA2D/834 North Auckland Registry);
- (iii) All that parcel of land containing 278 square metres more or less being Lot 1 of the subdivision of Allotment 6, Section 22 City of Auckland (Certificate of Title NA84/278 North Auckland Registry);
- (iv) All that parcel of land containing 567 square metres more or less being Part Allotment 6-7, Section 22 City of Auckland (Certificate of Title NA147/129 North Auckland Registry);
- (v) All that parcel of land containing 845 square metres more or less being Part Allotments 6 and 7, Section 22 Town of Auckland (Certificate of Title NA599/2 North Auckland Registry);
- (vi) All that parcel of land containing 281 square metres more or less being Part Allotment 6, Section 22 Town of Auckland (Certificate of Title NA599/3 North Auckland Registry);
- (vii) All that parcel of land containing 278 square metres more or less being Part Allotment 8, Section 22 Town of Auckland (Certificate of Title NA599/4 North Auckland Registry);
- (viii) All that parcel of land containing 329 square metres more or less being Lot 2 Deposited Plan 28234 (Certificate of Title NA818/165 North Auckland Registry);
- (ix) All that parcel of land containing 316 square metres more or less being Lot 1 Deposited Plan 28234 and Part Allotment 5, Section 22 City of Auckland (Certificate of Title NA819/183 North Auckland Registry); and
- (x) All that parcel of land containing 706 square metres more or less being Lot 1 Deposited Plan 46555 (Certificate of Title NA1654/99 North Auckland Registry).

5. The Licence Holder shall lodge and maintain with the Commission and the Secretary updated as built architectural floor plans of Levels 1, 2, 3, 5 and 6 of the Original Casino Venue Site and Level 7 of the Grand Hotel on the NZICCA Additional Site, showing walls, structures and dimensions. Updated as built architectural floor plans shall be lodged with the Commission and the Secretary if the Licence Holder makes alterations to the casino venue requiring building consent from a territorial authority.
6. The Licence Holder must obtain the approval of the Commission prior to:
- (a) construction or design changes to Levels 1, 2, 3, 5 and 6 of the Original eCasino Sitevenue, including the Gambling Area but excluding the Sky Tower, SKYCITY Theatre and foyer area,

restaurant and bar areas outside the Gambling Area, hotel rooms and the back of house areas used by staff (unless construction or design changes to any of these excluded areas may impact on matters set out in condition 7 in which case prior approval must be sought);

(b) ~~construction and design changes to Level 7 of the Grand Hotel on the NZICCA Additional Site;~~

~~(b)(c) the construction or relocation outside the Gambling Area and within the Original Casino Venue Site or the NZICCA Additional Site of bank facilities available to the public excluding ATMs, EFTPOS and like devices;~~

(d) ~~the addition or alteration of signage relating to the casino business on any building, road or structure within the Original Casino Site or the NZICCA Additional Siteblock of land bounded by Hobson Street, Wellesley Street West, Federal Street and Victoria Street West, including, the Casino Venue, Sky Tower, car park, bus terminal and walkways between any of the Original Casino Sitecasino and the Sky Tower and the convention centreNZICCA Additional Site.~~

The process by which the Licence Holder may obtain approval for construction or design changes to Levels 1, 2, 3, 5 and 6 of the ~~Original Casino Venue Site~~, and Level 7 of the Grand Hotel on the NZICCA Additional Site, including the Gambling Area (paragraphs (a) and (b) above) is set out in condition 7. The Commission will determine any application for approval under 6(c). The Executive Director may approve the addition or alteration of signage relating to the casino business on any building, road or structure within the ~~casino block~~Original Casino Site or the NZICCA Additional Site (paragraph (d) above) if ~~he/she is satisfied that the proposed changes will have no potentially adverse effects. If he/she is not so satisfied,~~ The proposed changes must otherwise be referred to the Commission for a decision on approval.

7. The Licence Holder must notify the Executive Director of any proposed changes to the construction or design of Levels 1, 2, 3, 5 and 6 of the ~~Original Casino Sitevenue~~, and Level 7 of the Grand Hotel on the NZICCA Additional Site, including the Gambling Area, but excluding Sky Tower, SKYCITY Theatre and foyer area, restaurant and bar areas outside the Gambling Area, hotel rooms, ~~and the back of house areas used by staff.~~ Notification must be accompanied by relevant drawings and an assessment of any impacts the alterations may have on:

- (a) the integrity and fairness of games;
- (b) the effectiveness of security and surveillance;
- (c) harm prevention, harm minimisation and responsible gambling;
- (d) potential access to the Gambling Area by persons under 20 years of age; and
- (e) compliance by any person with the Act, including section 11.

The Executive Director may approve the proposed changes to the construction or design if ~~he or she is satisfied that there are no adverse impacts in relation to the matters specified in (a)-(e) above. If~~ The Executive Director ~~is not satisfied, he or she will~~ must otherwise refer the proposal to the Commission for determination.

8. The definition of "Deed of Trust", together with licence conditions 15 and 19 of SCAL's venue licence are as follows:

Deed of Trust means the undated Deed of Charitable Trust concluded in June 1997 settled by Harrah's SKY CITY Limited.

15. The Licence Holder shall financially support the Independent Charitable Trust established by the Deed of Trust. The Licence Holder shall pay to the Trust, in respect of each full year of casino operations, not less than 2.5% of the net profit after tax from the on-site businesses of the Casino Venue and conjunct facilities including the Sky Tower, hotel facilities and the Convention Centre opposite the Casino Venue, such payment in any one year never to be less than \$500,000. The Licence Holder is required to provide annually to the Commission an audited statement certifying the amount constituting 2.5% of the net profit after tax from the on-site businesses of the Casino Venue and conjunct facilities, the amount paid by the Licence Holder to the Trust, and confirming that payment by the Licence Holder to the Trust has been made in accordance with condition 15.

19. The Licence Holder shall not permit any person to operate the Casino otherwise than in accordance with the terms of the approved Management Agreement between the Licence Holder and SKYCITY Casino Management Limited and others dated 26 May 1998, as varied by the Variation to Management Agreement dated 13 November 2001, or such variation thereof or further Casino Agreement as may from time to time be approved by the Commission.

The Secretary's submissions

9. The Secretary advised that he had no regulatory concerns with the Commission's proposal.

SCAL's submissions

10. SCAL submitted, in summary, as follows:
 - (a) It has no objection to the proposed amendments which extend the Commission's control over construction and design changes to Level 7 of the Grand Hotel, although it would be appropriate to extend some of the same exclusions featured in condition 6(a). It proposed the following revised wording to condition 6(b):
 - (b) construction and design changes to level 7 of the Grand Hotel on the NZICCA Additional Site but excluding restaurant and bar areas outside the Gambling Area and back of house areas used by staff (unless construction or design changes to any of these excluded areas may impact on matters set out in condition 7 in which case prior approval must be sought).

 - (b) The extension of signage requiring approval to include areas within the NZICC Additional Site will affect a number of restaurants including the Fed Deli, Depot and the Grill. Permanent signage affixed to these venues presents no problems but restaurant venues tend to advertise their offerings from time to time on chalkboards, noticeboards and menus outside their establishments. These items can change relatively regularly and it is unclear whether they would constitute "signage" for the purposes of the licence condition. Its preference would be to exclude temporary advertising of this sort (which relates solely to food and beverage sold in the restaurants) from the approval requirements. There is a

danger that restaurant staff may inadvertently overlook the need to notify compliance personnel each time there is a change to a chalkboard, thus creating compliance risks. To the extent that this form of advertising may be of no real interest to the Gambling Commission, there may be grounds to narrow the signage definition to exclude such items. That would be its preference and it submits the condition should be revised accordingly.

- (c) While not part of the current proposals, it noted that condition 15 of the venue licence refers to the Convention Centre opposite the Casino Venue (a reference to the existing convention centre) as being part of the casino's conjunct facilities. With the extended definition of Casino Venue, it now forms part of the "on-site businesses of the Casino Venue". What is not clear is the status of the new Convention Centre in the context of this licence condition and whether it forms part of the conjunct facilities. This condition may need further attention to address this issue.
 - (d) The definition of the "Deed of Trust" could be updated following variations to the Deed that were approved by the Commission.
 - (e) It may be timely to update condition 19 following the recent approval of a new Management Agreement.
11. After providing its written submissions, SCAL orally submitted that its proposed amendments to the definition of "Deed of Trust" and condition 19 should not be made as it preferred to consider these matters further before proposing amendments in the future.

Analysis

Construction and design and signage control extension

12. The Commission's proposal arose following its consideration of a number of applications leading to decision GC21/15. In that decision, the Commission noted the need to amend licence conditions in order to incorporate Level 7 of the Grand Hotel as one of the areas requiring Commission approval prior to any construction and design changes being carried out.
13. The Commission proposed amendments to conditions 4, 5, 6 and 7, and circulated those to SCAL and the Secretary for comment. Neither the Secretary nor SCAL had any particular objection to the proposed amendments, although SCAL submitted that it would be appropriate to extend some of the same exclusions featured in condition 6(a) to proposed condition 6(b); namely to exclude from the Commission's oversight, those areas of Level 7 that have no impact upon the gambling activity taking place there.



14. The Commission agreed that, consistent with condition 6(a), it need not oversee construction and design changes in areas on Level 7 in which no gambling activity would take place. The Commission decided to make a minor amendment to SCAL's proposed draft, to ensure that condition 6(b) would be completely consistent with condition 6(a). The form of condition 6(b) which will be imposed is as follows:
 - (b) construction and design changes to level 7 of the Grand Hotel on the NZICCA Additional Site, including the Gambling Area but excluding restaurant and bar areas outside the Gambling Area and the back of house areas used by staff (unless construction or design changes to any of these excluded areas may impact on matters set out in condition 7 in which case prior approval must be sought).
15. SCAL also raised an issue in relation to the extension of the signage licence condition, which will now apply to a number of restaurants in Federal Street as a result of the expansion of the Casino Venue. SCAL submitted that the extension could lead to non-compliance by SCAL because the restaurants use chalkboards and similar to display daily menus and specials. If these constituted "signage", SCAL would be at risk of regular breach of condition 6(d) by restaurant staff amending them without Commission approval.
16. SCAL submitted that its preference would be to amend the licence condition to remove all control over non-gambling signage.
17. SCAL (and others) applied to amend the same condition in 2015, proposing that only gambling related signage on or around the Auckland casino should require approval by the Commission, with all non-gambling related signage able to be erected without Commission oversight. The Commission declined SCAL's proposal, for the reasons set out in decision GC15/15. Of particular concern was the difficulty in categorising signage unambiguously as either "gambling" or "non-gambling".
18. The Commission remains of the view that amending the signage licence condition to create an exemption for "non-gambling" signage would not be appropriate for the same reasons but it considers that a practical solution for the difficulty raised by SCAL is possible in the form of a general approval for a tightly defined class of signage, which would mean that individual approval of each sign in the class would no longer be required. The approval would be aimed at the specific signage identified (non-permanent restaurant chalkboard and menu displays) combined with a restriction on direct or indirect references to gambling or to the casino business. If unexpected problems were to eventuate in operation, the general approval may be withdrawn or its terms modified.
19. The Commission decided to issue a general approval for signage outside the Auckland casino which meets all of the following criteria:

- (a) The sign is a chalkboard or similar menu display placed outside restaurant premises in Federal Street.
- (b) The content of the sign is limited to advertising food and beverage sold by the particular restaurant in the form of the display of menu items and specials available at the restaurant.
- (c) The sign contains no direct or indirect reference to gambling or to the casino business, including any reference to SKYCITY.

Changes to Deed of Trust definition and condition 19

20. SCAL initially proposed amendments to the definition of "Deed of Trust" and to condition 19, but subsequently submitted that these matters were better addressed in the future. As the Commission considers that there is no urgency to amend these provisions at present, the Commission will defer its consideration of any changes as requested.

The future application of condition 15 (charitable trust)

21. SCAL also suggested that the Commission may wish to consider whether condition 15 of SCAL's venue licence should be applied to the new International Convention Centre currently being built in Auckland. Condition 15 requires SCAL to pay "2.5% of the net profit after tax from the on-site businesses of the Casino Venue and conjunct facilities including the Sky Tower, hotel facilities and the Convention Centre opposite the Casino Venue ..." to SKYCITY's Independent Charitable Trust.
22. The original Convention Centre referred to in the licence condition is now part of the Casino Venue pursuant to NZICCA, which also provides for the construction of a new Convention Centre, to be known as the NZICC, which will also be opposite the (now expanded) Casino Venue, albeit on the other side. At issue is whether the effect of NZICCA on the charitable trust provision, condition 15, should be to include the profit from the new Convention Centre, NZICC, which will replace the original separate Convention Centre which has now become part of the Casino Venue. That is the apparent effect of the condition on the current and immediately anticipated circumstances, although those circumstances were not contemplated at the time that the condition was originally imposed. The question is whether such an effect remains appropriate in light of the NZICCA changes.
23. When the Commission asked SCAL whether the profit subject to condition 15 should include that derived from the NZICC, SCAL responded that the issue should first be canvassed widely within the business, and suggested that the issue be adjourned for consideration at a later date.



24. The Commission agrees. Whether condition 15 applies to the new NZICC has potentially significant effects on the owner/operator, the charitable trust and the wider community of potential beneficiaries. Because work on the new NZICC has only just begun, there is time for the issue to be addressed in a considered and careful manner with the benefit of broad consultation.
25. The Commission decided that it would propose, on its own initiative under section 139(1)(e) of the Act, an amendment to condition 15 of SCAL's venue licence, to incorporate expressly the new NZICC within condition 15, and to consult widely on the proposal.

Decision

26. Pursuant to section 139(1)(e) of the Act, the Commission varied licence conditions 4, 5, 6 and 7 of SCAL's venue licence. Conditions 4, 5, 6 and 7 now provide as follows:

Auckland venue licence

4. **Casino Venue** means the area defined in Schedule 1 of NZICCA under the heading "Schedule 6 of Agreement, Increase in Area of Casino Venue".

Original Casino Site means all of the land and buildings bounded by Hobson Street, Wellesley Street West, Federal Street and Victoria Street West, Auckland, New Zealand, being the parcels of land comprising:

- (i) All that parcel of land containing 6342 square metres more or less being Lot 1 Deposited Plan 105225 and being Allotments 23, 24, 25, 33, 34, 35 and 43 and part Allotments 19, 20, 21 and 22, Section 22 City of Auckland (Certificate of Title 58A/312 North Auckland Registry);
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- (iii) All that parcel of land containing 278 square metres more or less being Lot 1 of the subdivision of Allotment 6, Section 22 City of Auckland (Certificate of Title NA84/278 North Auckland Registry);
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 - (v) All that parcel of land containing 845 square metres more or less being Part Allotments 6 and 7, Section 22 Town of Auckland (Certificate of Title NA599/2 North Auckland Registry);
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 - (x) All that parcel of land containing 706 square metres more or less being Lot 1 Deposited Plan 46555 (Certificate of Title NA1654/99 North Auckland Registry).
5. The Licence Holder shall lodge and maintain with the Commission and the Secretary updated as built architectural floor plans of Levels 1, 2, 3, 5 and 6 of the Original Casino Site and Level 7 of the Grand Hotel on the NZICCA Additional Site, showing walls, structures and dimensions. Updated as built architectural floor plans shall be lodged with the Commission and the Secretary if the Licence Holder makes alterations to the casino venue requiring building consent from a territorial authority.
6. The Licence Holder must obtain the approval of the Commission prior to:
- (a) construction or design changes to Levels 1, 2, 3, 5 and 6 of the Original Casino Site, including the Gambling Area but excluding the Sky Tower, SKYCITY Theatre and foyer area, restaurant and bar areas outside the Gambling Area, hotel rooms and the back of house areas used by staff (unless construction or design changes to any of these excluded areas may impact on matters set out in condition 7 in which case prior approval must be sought);
 - (b) construction and design changes to level 7 of the Grand Hotel on the NZICCA Additional Site, including the Gambling Area but excluding restaurant and bar areas outside the Gambling Area and the back of house areas used by staff (unless construction or design changes to any of these excluded areas may impact on matters set out in condition 7 in which case prior approval must be sought).
 - (c) the construction or relocation outside the Gambling Area and within the Original Casino Site or the NZICCA Additional Site of bank facilities available to the public excluding ATMs, EFTPOS and like devices;

- (d) the addition or alteration of signage relating to the casino business on any building, road or structure within the Original Casino Site or the NZICCA Additional Site, including, walkways between any of the Original Casino Site and the NZICCA Additional Site.

The process by which the Licence Holder may obtain approval for construction or design changes to Levels 1, 2, 3, 5 and 6 of the Original Casino Site, and Level 7 of the Grand Hotel on the NZICCA Additional Site, including the Gambling Area (paragraphs (a) and (b) above) is set out in condition 7. The Commission will determine any application for approval under 6(c). The Executive Director may approve the addition or alteration of signage relating to the casino business on any building, road or structure within the Original Casino Site or the NZICCA Additional Site (paragraph (d) above) if satisfied that the proposed changes will have no potentially adverse effects. The proposed changes must otherwise be referred to the Commission for a decision on approval.

- 7. The Licence Holder must notify the Executive Director of any proposed changes to the construction or design of Levels 1, 2, 3, 5 and 6 of the Original Casino Site, and Level 7 of the Grand Hotel on the NZICCA Additional Site, including the Gambling Area, but excluding Sky Tower, SKYCITY Theatre and foyer area, restaurant and bar areas outside the Gambling Area, hotel rooms, the back of house areas used by staff. Notification must be accompanied by relevant drawings and an assessment of any impacts the alterations may have on:

- (a) the integrity and fairness of games;
- (b) the effectiveness of security and surveillance;
- (c) harm prevention, harm minimisation and responsible gambling;
- (d) potential access to the Gambling Area by persons under 20 years of age; and
- (e) compliance by any person with the Act, including section 11.

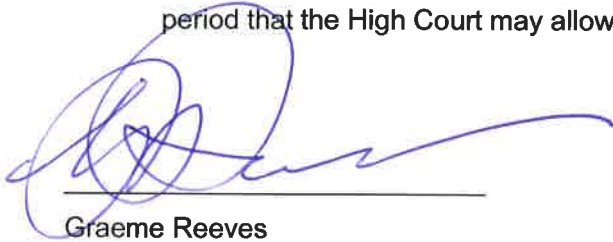
The Executive Director may approve the proposed changes to the construction or design if satisfied that there are no adverse impacts in relation to the matters specified in (a)-(e) above. The Executive Director must otherwise refer the proposal to the Commission for determination.

- 27. Pursuant to condition 6(d), the Commission also approves signage outside the Auckland casino which meets all of the following criteria:

- (a) The sign is a chalkboard or similar menu display placed outside restaurant premises in Federal Street.
- (b) The content of the sign is limited to advertising food and beverage sold by the particular restaurant in the form of the display of menu items and specials available at the restaurant.
- (c) The sign contains no direct or indirect reference to gambling or to the casino business, including any reference to SKYCITY.

Right of appeal

28. Pursuant to section 235 of the Act, a person affected by the decision recorded in paragraph 26 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.



Graeme Reeves
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

31st

March 2016

