

IN THE MATTER of the Gambling Act 2003
AND on an application by **SKYCITY HAMILTON LIMITED** to redesignate the Gambling Area at the Hamilton casino

BEFORE THE GAMBLING COMMISSION

Members: G L Reeves (Chief Gambling Commissioner)
P J Stanley
L M Hansen
R D Bell
A K Foote

Date of Application: 18 December 2012

Date of Decision: 15 February 2013

Date of Notification
of Decision: / March 2013

**DECISION ON AN APPLICATION BY SKYCITY HAMILTON LIMITED
TO REDESIGNATE THE GAMBLING AREA AT THE HAMILTON CASINO**

Introduction

1. SKYCITY Hamilton Limited ("**SHL**") has applied to the Commission:
 - (a) for an alternative Gambling Area for the Hamilton casino, under condition 9 of SHL's venue licence and section 139 of the Gambling Act 2003 (the "**Act**"); and
 - (b) to vary condition 9 of SHL's venue licence and to specify a new condition, 9A, under section 139(1)(d) of the Act.

Act and licence conditions

2. The relevant section of the Act is as follows:

139. Conditions of casino licence

- (1) The Gambling Commission may specify the conditions of the casino licence or vary or revoke the conditions of a casino licence in the following circumstances:
 - (a) on granting a casino operator's licence;
 - (b) on renewing a casino venue licence;
 - (c) on approving a casino venue agreement or an amendment to it;
 - (d) on application by the holder of the casino licence;
 - (e) on its own initiative or on the request of the Secretary.
- (2) A condition of a casino licence specified under subsection (1) –
 - (a) must be consistent with this Act; and

- (b) must contribute to achieving the purposes of this Act; and
- (c) must contribute to the efficient and effective administration of this Act; and
- (d) must not permit an increase in the opportunities for casino gambling; and
- (e) may relate to any matter, including the matters specified in Schedule 1, within the confines of paragraphs (a) to (d).

3. The relevant licence condition is as follows:

SHL's venue licence

9. The Gambling Area within the Casino Venue comprises the areas specified in a plan dated 16 August 2010 approved by the Commission in its decision GC20/10.

SHL's submissions

4. SHL submitted, in summary, as follows:

- (a) In decision GC20/10, the Commission approved the redesignation of the Gambling Area at the Hamilton casino. This created two distinct Gambling Areas on the casino floor, while excluding the Vue Restaurant.
- (b) This designation allowed SHL to employ persons aged under 20 to work in the kitchen, and provided them with the ability to exit the casino in an emergency where the service lifts were unable to be used, without committing a technical breach of section 303 of the Act.
- (c) It wants to create an alternative gambling area which encompasses the Vue Restaurant to allow it to deploy gambling product in this area. It does not yet know when this will happen, or what design changes will be made, as planning will be undertaken only when it has the certainty of knowing that the area can be used for the placement of gambling product. However, it is considering converting the area into an exclusive VIP area.
- (d) It is seeking to expand its Gambling Area as the gaming business in Hamilton has grown in recent times, and with plans to build a hotel on top of the casino venue this year, it wants to utilise the space occupied by the Vue Restaurant to deploy gambling products in order to create a more comfortable environment for casino patrons.
- (e) The kitchen area will retain its designation as non-gambling area, allowing staff under the age of 20 to continue working in this area if necessary, although the inability of such people to exit the building through the casino in the event of an emergency would have to be factored into their deployment to this area. The



design and use of the new area is likely to negate the need to engage staff under the age of 20 in any event.

(f) The redrafted version of condition 9 meets the section 139 requirements. The amended conditions are as follows:

9. The current Gambling Area for the Casino Venue is delineated in the plan attached as Schedule 1 to these conditions. An alternative gambling area is delineated in the plan attached as Schedule 2.

9A A change of Gambling Area will take effect subject to the Licence Holder providing the Commission and the Inspectorate a minimum of 10 working days notice in writing of its intention to adopt one of the approved gambling areas referred to in condition 9 and shown in Schedules 1 and 2.

(g) The introduction of a new alternative gambling area does not increase the opportunities for casino gambling as the new area will simply house product from other parts of the casino. If it is decided to activate the alternative gambling area in the future, an application will be made for a revised floor plan showing the proposed deployment of product. This would allow the Commission to consider whether the revised gaming locations would increase casino gambling opportunities.

The Secretary's submissions

5. The Secretary submitted that he had no regulatory concerns with the proposal. He noted that the plan for the proposed alternative gambling area includes more gaming machines than SHL's licence conditions permit. He submitted that for clarity and consistency, the Commission may want SHL to re-submit corrected plans of the proposed gambling area for approval.

SHL's submissions in reply

6. In reply, SHL submitted that it did not seek to be specific in relation to the EGM numbers depicted on the plan because the approval sought relates solely to the area in which gambling may be conducted. The location and number of gambling products is subject to a different application and approval process.

7. SHL also provided the Commission with additional information on the non-gambling activities that have been available at the casino since it was constructed.

Analysis

8. SHL has applied to the Commission for an alternative Gambling Area which would result, when activated, in the entire gaming level of the casino, except the kitchen, being designated as Gambling Area.

9. The Commission has previously considered whether it has the power to redefine a casino's gambling area, holding that it can do so, provided that the amended area does not extend beyond the casino venue as defined in the casino venue licence and the amended licence conditions defining the new area are consistent with section 139(2) of the Act.
10. SHL's venue licence defines the casino venue as "That part of the property situated at 346 Victoria Street, Hamilton, being more fully described in the First and Second Schedules to this licence." The First Schedule sets out the legal description of the casino, with the Second Schedule depicting the casino pictorially with plans. The Commission was satisfied that the alternative Gambling Area falls within the defined casino venue.
11. The Commission was also satisfied that the proposed licence conditions are consistent with section 139(2) of the Act. Specifically it is satisfied that the expansion of the Gambling Area does not, of itself, increase opportunities for casino gambling. As noted in decision GC01/13, mere approval of an extended Gambling Area does not confer on the licence holder permission to place any gambling products into the redesignated area. Placement of gambling products within the designated Gambling Area is controlled by floor plans approved by the Commission. At the point that the Commission is asked to approve floor plans allowing SHL to deploy gambling products in the extended area, the Commission will further consider the issue of increased opportunities for casino gambling or the risk of harm.
12. Finally, the Secretary was right to observe, for the benefit of the Commission and SHL alike, that the illustrative plan depicting the alternative Gambling Area showed the placement of more gaming machines than SHL's licence conditions permit. That is a matter which SHL will need to take into account when it submits future floor plans for approval as it recognised in its reply submissions. For the avoidance of confusion, this application relates solely to the designation of an alternative gambling area. Its approval will not authorise the relocation of any gambling products within that area, including the illustrative placements depicted in the plans submitted with the application. Placement of gambling products is controlled by approved floor plans.
13. The Commission has made two minor amendments to the proposed wording to improve its clarity and consistency of language.



Decision

14. The Commission decided:
- (a) to approve an alternative Gambling Area for the Hamilton casino under condition 9 of SHL's venue licence and section 139 of the Act;
 - (b) to vary condition 9 of SHL's venue licence (with minor amendments), under section 139(1)(d) of the Act, to allow for the alternative Gambling Area at the Hamilton casino. Condition 9 now provides as follows:
 - 9. The standard Gambling Area for the Casino Venue is delineated in the plan attached as Schedule 1 to these conditions. The alternative Gambling Area is delineated in the plan attached as Schedule 2.
 - (c) to specify condition 9A of SHL's venue licence, under section 139(1)(d) of the Act to allow SHL to deploy the alternative Gambling Area on notice. Condition 9A provides as follows:
 - 9A. A change of Gambling Area will take effect subject to the Licence Holder providing the Commission and the Inspectorate a minimum of 10 working days notice in writing of its intention to adopt one of the approved Gambling Areas referred to in condition 9 and shown in Schedules 1 and 2.
15. Schedules 1 and 2 are **attached**.

Right of appeal

16. 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.

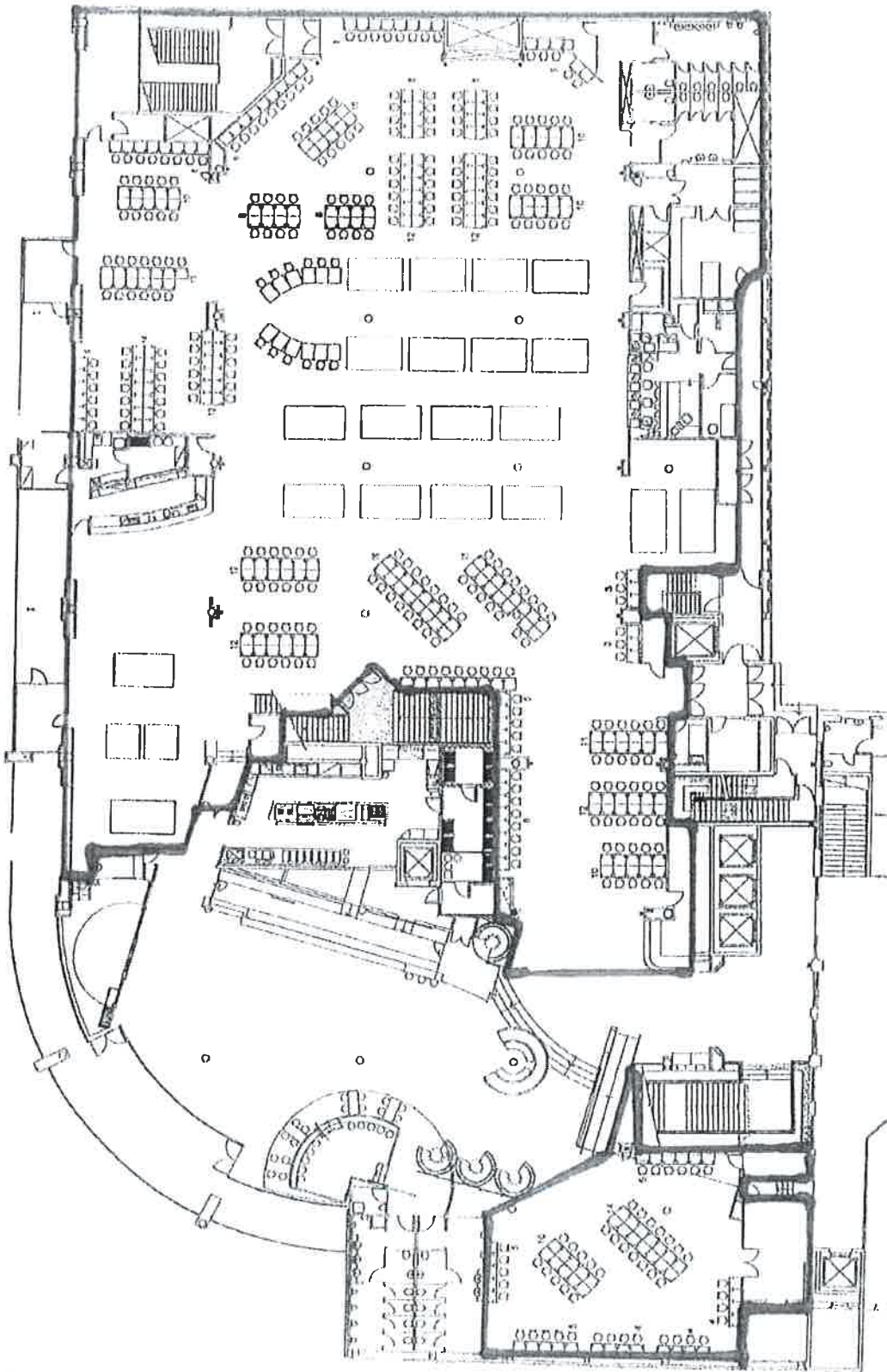


Graeme Reeves
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

| March 2013

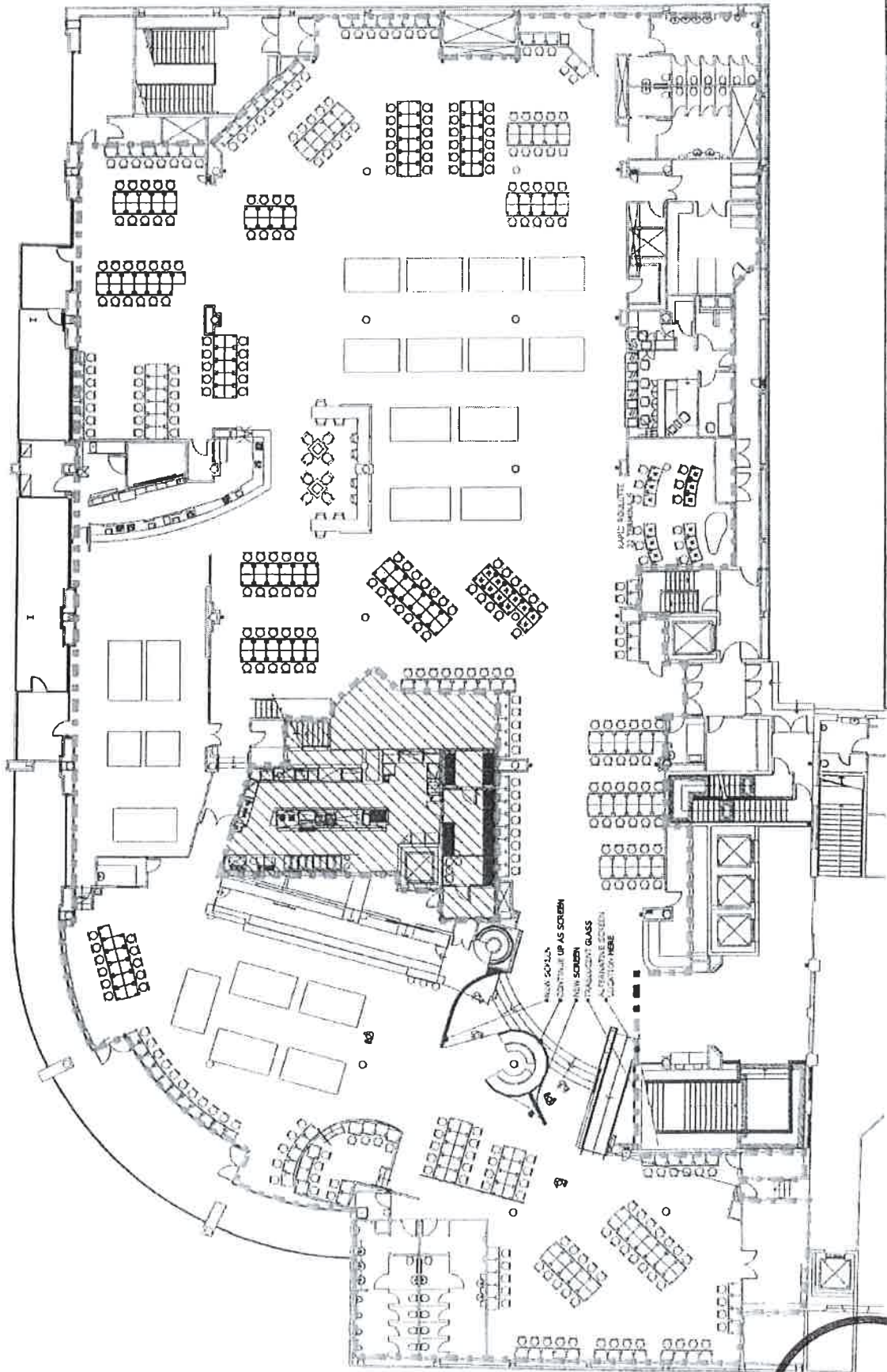
Schedule 1



<p>DATE: 19-08-09 PROJECT: SKYCITY CASINO GAMING FLOOR SHEET: B005 - Layout</p>	
<p>SKYCITY HAMILTON CASINO</p>	
<p>BY: [Signature] CHECKED: [Signature] DATE: 19-08-09</p>	



Schedule 2



REMOVE SCREEN
CONTINUE UP AS SCREEN
NEW SCREEN
TRANSPARENT GLASS
TRANSPARENT SCREEN
LOCATION HERE

Redline Zones

SKY CITY ARCHITECT
02

SKY CITY ARCHITECT
ARCHITECTS
FLOOR LAYOUT

