

IN THE MATTER of the Gambling Act 2003
AND of an application by **SKYCITY AUCKLAND LIMITED** to vary licence condition/s for the Auckland casino

BEFORE THE GAMBLING COMMISSION

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

Date of Application: 15 December 2017

Date of Decision: 14 February 2018

Date of Notification
of Decision: 28 February 2018

**DECISION ON AN
APPLICATION BY SKYCITY AUCKLAND LIMITED
TO VARY LICENCE CONDITION/S FOR THE AUCKLAND CASINO**

Application

1. SKYCITY Auckland Limited ("**Applicant**" or "**SCAL**") applied to the Commission to vary condition 8, or in the alternative conditions 6 and 8, of SCAL's venue licence for the Auckland Casino, under section 139(1)(d) of the Gambling Act 2003 ("**Act**").
2. Section 140 of the Act provides that the Commission must notify the Secretary for Internal Affairs ("**Secretary**") and other potentially affected persons of any proposed licence condition change. The Commission invited submissions from the Secretary, Ministry of Health ("**MoH**"), Problem Gambling Foundation ("**PGF**"), Salvation Army Oasis ("**SA**") and Homecare Medical. It received submissions from the Secretary, MOH, SA and PGF, and submissions in reply from SCAL.

Licence condition

3. The current licence condition, with proposed principal variation in mark-up, is as follows:

SCAL's venue licence (Auckland)

8. The Licence Holder shall ensure that:
 - (a) gambling activity is not visible from outside the Casino Venue; and

- (b) there is provision for generation of emergency power to maintain in situations of an interruption to mains power:
 - (i) minimum services to the Gambling Area; and
 - (ii) lighting in highly sensitive areas such as count rooms, surveillance suite, cashiering locations and gambling equipment storerooms.

provided that the broadcasting of gambling activity by or on behalf of the Licence Holder via any communication medium or channel will not constitute a breach of condition 8(a).

Relevant section of the Act

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

Gambling Act 2003

139 Conditions of casino licence

- (1) The Gambling Commission may specify the conditions of a 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).

Submissions by the Applicant

5. The Applicant submitted, in summary, as follows:

- (a) Pursuant to condition 8(a) of its venue licence, the Licence Holder shall ensure that gambling activity is not visible from outside the casino venue. Licence condition 8 falls under the general heading "Design and Construction" and has been viewed by the Commission as an environmental control (refer decision GC15/11) that has been in place in one form or another since casinos opened in New Zealand.



- (b) Visibility restrictions may also relate in part to elements of concern about preventing gambling harm. In 2011, PGF submitted that actual or potential problem gamblers should also be protected from being seduced into gambling at the casino when passing by or carrying out entirely unrelated activities nearby. PGF went on to submit that, because casinos are usually located in busy central city areas, and in close proximity to key areas for shopping, accommodation, recreation and employment, it is vital that there be a ban on the visibility and audibility of gambling activities (refer decision GC32/11).
- (c) While the condition may have been designed as an environmental control and possibly in part to mitigate the potential for impulse gambling by passing foot traffic, as it stands, its effect would arguably prohibit the broadcasting of casino gambling activity, notwithstanding that broadcasting was neither specifically contemplated nor addressed in the course of earlier decisions relating to this area.
- (d) It briefly raised this issue with the Commission in 2016, in the context of a proposal to stream the final of a casino poker tournament using social media. The Commission indicated that the scope of the condition did not allow for the poker competition to be streamed in the way proposed, and that a variation would be necessary if the casino operator wanted to proceed in this direction.
- (e) The primarily proposed amendment to condition 8(a) assumes that there would be no adverse consequences arising from the broadcasting of gambling activity outside the casino (although the revised condition would continue to be subject to the gaming machine jackpot advertising prohibition as set out in the Gambling (Harm Prevention and Minimisation) Regulations 2004 ("**Regulations**").
- (f) While that is its primary position, it has allowed for the possibility that the Commission would take the view that there may be occasions where it is undesirable, as a matter for policy, for gambling activity to be broadcast outside the Casino. The current application is accordingly framed in the alternative.
- (g) In the event that the Commission is unwilling to remove entirely and without condition the broadcasting of gambling activity from the prohibition in condition 8(a), the alternative proposal seeks the following variations to conditions 6 and 8:

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;
- (e) the broadcasting of gambling activity by or on behalf of the Licence Holder via any communication medium or channel.

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) and the broadcasting of gambling activity by or on behalf of the Licence Holder via any communication medium or channel (paragraph (e) above) if satisfied that the proposed changes initiative(s) will have no potentially adverse effects. The proposed changes initiative(s) must otherwise be referred to the Commission for a decision on approval.

8. The Licence Holder shall ensure that:

- (a) gambling activity is not visible from outside the Casino Venue unless approved by the Commission pursuant to condition 6(e); and
 - (b) there is provision for generation of emergency power to maintain in situations of an interruption to mains power:
 - (i) minimum services to the Gambling Area; and
 - (ii) lighting in highly sensitive areas such as count rooms, surveillance suite, cashiering locations and gambling equipment storerooms.
- (h) Although the current restriction seems to prohibit the broadcasting of casino gambling activity outside a casino, it does not do so specifically in its terms. The current condition on visibility restrictions is likely to have been motivated by environmental design and concerns about the mitigation of impulse behaviour by passing pedestrians. The merits or otherwise of broadcasting casino gambling activity appears not to have been previously considered.
- (i) The absence of any wider legislative restrictions on the visibility of gambling activity and advertising, which enables gambling activity to be broadcast (the one exception being gaming machine jackpot advertising) is inconsistent with a casino specific restriction.
- (j) Gambling activity is widely accessible for viewing and participation purposes via social media, which includes the live streaming of events. Persons participating in gambling activity often feature on television shows, including the televising of poker tournaments overseas. In light of the existing widespread visibility of gambling activity in those forms, it does not believe that the effect of current condition (affecting only the broadcasting of New Zealand casino gambling activity) contributes to the prevention and minimisation of harm from gambling.
- (k) The catalyst for the application is its desire to host a televised poker tournament (World Poker Tour) at the Casino this year. Of the World Poker Tour's 50 events, nine are filmed for television and made in 27 one-hour episodes, broadcast throughout the year on Fox Sports Network and internationally distributed around the world. The agreement with World Poker Tour would involve the live streaming of the final, and, importantly, would also involve extensive footage of the Casino property and its various attractions. Such streaming would represent highly valuable advertising on the world stage. The broadcasting of gambling activity



from within the Casino outside New Zealand would presumably not be prohibited, in the sense that the current condition has no extra-territorial effect. However, to the extent the tournament featured on local television (which is quite likely), it would seem to contravene the current condition; hence the variation application.

- (l) Although the televising of the World Poker Tour event is the primary catalyst for the variation application, there have been other occasions where the current condition has either frustrated proposals to record casino related events on social media, or created an element of uncertainty about its application to those events. For instance, in the case of promotional activity, it is often difficult to discern whether a particular component of such activity would amount to "gambling activity" for the purposes of the condition.
- (m) Under the Casino's HRP, there are processes in place to ensure harm minimisation issues are considered and addressed in the development of all marketing initiatives. The consultation process which involves the Host Responsibility and Legal teams and is a prerequisite to any final approval to proceed, involves consideration of a range of principles designed to assess whether the initiative is likely to cause harm. In its view these processes provide sufficient protection for ensuring that the broadcasting of gambling activity in any particular case will not have adverse effects.

Submissions by SA

6. SA submitted, in summary, as follows:

- (a) While in principle, it is opposed to any expansion of the promotion of gambling activity in the media, because poker carries a relatively low risk of gambling harm, it is not particularly concerned with the activity which was the catalyst for the application; namely the desire to be able to stream poker tournaments played in New Zealand casinos.
- (b) The primarily proposed amendment goes far beyond the streaming of major poker tournaments. Although provisions covering responsible marketing are built into the HRP for the Auckland casino, permitting SCAL to broadcast casino gambling activity without any direct controls or limitations has dangerous potential, particularly for vulnerable groups such as problem gamblers, youth, children, older persons, Maori, Pacific and Asian peoples.
- (c) It is particularly concerned by SCAL's wish to promote casino gambling via social media. Around 70% of New Zealanders have a smart phone, with social media



use standing between 60 and 90%, depending on age. The potential market for social media promotions is huge and expansion of gambling promotion will lead to increased levels of gambling and harmful gambling practices, including the normalisation of gambling to children and young people. Mobile devices enable gambling to be promoted anywhere, at any time, including to "at-risk" populations.

- (d) While some gambling activity is already widely accessible via social media, it disagrees with SCAL's assertion that restricting the broadcasting of New Zealand casino gambling activity would not contribute to the prevention and minimisation of gambling harm. While existing promotional material may attract online gamblers and non-casino gamblers to participate in gambling, there are currently no broadcasts of gambling activity at a local, physical casino. Allowing expansion of the visibility of New Zealand casino gambling in the way proposed carries new risks associated with the proximity of the Auckland casino facilities; namely, drawing in land-based casino gamblers who may otherwise not have participated in gambling.
- (e) It is troubled by the potential impact which social media promotions could have on children and adolescents, for whom communication devices and social media are an even more entrenched way of life. Children and adolescents are particularly vulnerable to gambling exposure via any channel. The visibility of gambling and accompanying advertising has, in recent research, been found to have profound effects on young people's perceptions of gambling, fostering the belief that it is a harmless, everyday activity rather than an occasional form of risk-taking entertainment.
- (f) Casinos are particularly attractive to young people, owing to their portrayal in media as glamorous and exciting places. The number of contexts in which young people are exposed to gambling activity is higher than ever. Current research indicates that New Zealand children live in an environment which is highly saturated in gambling marketing, with children exposed to an average of three gambling advertisements per day. The proposal is especially problematic because children often have difficulty recognising the difference between advertising and regular programming content. Higher volumes of media exposure, and advertising in particular, are in essence creating a social context in which gambling is seen as harmless and acceptable, encouraging an irresponsible approach to gambling, and increasing intentions to gamble in young people.



- (g) Because the earlier that people begin gambling the more likely they are to experience problems from gambling, it opposes any proposal that may increase young people's exposure to gambling and gambling advertising.
- (h) The proposal could cause harm to problem gamblers. Exposure to gambling activity can be a significant trigger for people with a history of harmful gambling, provoking the urge to gamble and undermining their attempts to stop. Problem gamblers are also more likely to notice gambling-related information, in effect multiplying its negative impact.
- (i) Under section 139(2) of the Act, amendments to casino licence conditions must contribute to achieving the purposes of the Act. The proposed changes to SCAL's venue licence are inconsistent with the Act's harm minimisation purpose. For the reasons outlined above, there are reasonable grounds to expect that permitting an increase in the visibility of gambling activity could result in increased harm.
- (j) It recommends that the Commission deny SCAL's application to vary condition 8 of its venue licence. The proposal rests on the assumption "that there are no adverse consequences attached to the broadcasting of gambling activity outside the casino" but SCAL itself admits that the "merits or otherwise" of broadcasting gambling activity remain uninvestigated. Before it is permitted to increase the visibility of casino gambling, SCAL should first establish that increased visibility will not increase risky patterns of gambling behaviour.
- (k) The alternative proposal to amend conditions 6 and 8 is more acceptable, so long as the Commission has regard to the risks outlined above when considering applications.
- (l) If SCAL wishes to promote its facilities online in future, it should develop a set of comprehensive regulations regarding quantity as well as content, as online media channels are especially pervasive. Such regulations would necessarily include steps to reduce the exposure of gambling products to vulnerable and at-risk populations, as well as harm minimisation measures such as responsible gambling messaging.

Submissions by PGF

7. PGF submitted, in summary, as follows:

- (a) It strongly opposes the application and any amendments to conditions 6 or 8 of SCAL's venue licence.



- (b) Condition 8(a) is a clear and specific example of what is required to give effect to the purposes and requirements of the Act. In Section 3 of the Act the first two purposes are:
- (a) to control the growth of gambling
 - (b) to prevent and minimise the harm caused by gambling including problem gambling.
- (c) Section 139(2)(d) of the Act makes it a condition of any casino licence that it:
- (a) Must contribute to achieving the purposes of the Act
 - (b) Must not permit an increase in the opportunities for casino gambling.
- (d) If SCAL streamed on social media, or broadcasted high intensity gambling poker games, it would be deliberately sought out, or accidentally found, by thousands of New Zealanders, a significant minority of whom could be triggered into a path of behaviour leading to them becoming problem gamblers. This consequence would be contrary to the abovementioned sections of the Act.
- (e) It is equally concerned about the harmful consequences arising from ground (iv) of SCAL's application which states in part:

The agreement with World Poker Tour would involve the live streaming of the final and importantly would also involve extensive footage of the Casino property and its various attractions. This would represent highly valuable advertising.

Broadcasting or streaming a range of specific gambling products and features in the casino, particularly poker machines and some of the table games, would also be likely to trigger a desire for both current and potential problem gamblers to come to the casino to play these particular machines or games. This form of advertising and promotion is also contrary to important sections of the Act.

- (f) Broadcasting or streaming of casino gambling activity to places at a distance from the casino is no different in its nature and effects from direct physical visibility immediately outside the casino.
- (g) It repeats submissions made in September 2011 in support of what is now the current condition 8(a), on the basis that they are also relevant to visibility of casino gambling activity on television or social media. Those submissions, relying on the results of the Kushner et al 2007 study, that problem gamblers are susceptible to being "cued" by the sights, sounds and smells of a casino, similar to alcoholics exposed to drinking cues, supported the addition of audibility as well as a visibility restrictions. They also argued that private residents or workers in the area around

a casino should be as entitled to avoid exposure to gambling activity as members of the general public.

- (h) The term "gambling activities" includes advertising for, or an external notice of the availability of, or a progress total for, a jackpot inside the casino.
- (i) The visibility restrictions are necessary for the protection of actual or potential problem gamblers so that, when passing by a casino or carrying out entirely different activities nearby, they are not seduced into entering and gambling in the casino against their better judgement and original intentions. External visibility frustrates attempts to avoid temptation and upsets those who simply find some gambling activities disagreeable, unpleasant or unacceptable to them. The restriction is intended to preserve their freedom of choice and their quality of life from intrusion by visible gambling activities. The same concerns apply to exposure to children and other vulnerable people against their wishes or interests, or those of their parents or caregivers.
- (j) In its clinical work with problem gamblers, attempts are made to organise daily activities to avoid exposure to gambling activities, principally "poker machines", to which they are particularly vulnerable. Lack of visibility controls would expose such people to unnecessary and often severe risk. Casinos are usually located in busy central city areas in close proximity to areas for shopping, accommodation, recreation, employment and business.
- (k) SCAL's alternative proposal reduces the risks and likely harm compared to the primary proposal. Nevertheless, it prefers that there be no opportunity to broadcast casino gambling activity. Any broadcasting of gambling activity carries unacceptable risks of harm, not all of which will necessarily be anticipated when considering an application for approval.

Submissions by MoH

8. After seeking comment from the Health Promotion Agency, which works with the gambling industry on venue harm minimisation policy, MoH submitted, in summary, as follows:
 - (a) It opposes SCAL's application for two reasons.
 - (b) The first and main reason is the risk of harm. The harm arises as a result of it deeming a broadcast of gambling activity to be a form of gambling advertisement. Evidence (albeit not identified or referenced) suggests that the advertising of gambling products could encourage the desire to gamble. The submission

contends that gambling advertising is not only harmful but, by implication, prohibited.

- (c) It rejects the argument that, because of the widespread visibility of other forms of gambling activity, maintaining a prohibition on the broadcasting of New Zealand casino activity would have minimal effect on gambling harm, because such an argument implies that harm from visibility was already maximised. It disagrees and asserts that any increase in gambling advertising would increase gambling harm. Although no supporting reason is stated, the assertion apparently assumes that increasing the desire to undertake an activity results in more harm from that activity.
- (d) How much harm would depend on the extent to which additional advertising were controlled. Live feeds via social media would be capable of reaching a nationwide audience of almost all ages with no ability to control viewing.
- (e) The second reason is that broadcasting would breach condition 8(a). If condition 8(a) were varied to permit live streaming of casino activity, it could not realistically be subject to any real control on who viewed it.

Submissions by the Secretary

9. The Secretary submitted, in summary, as follows:

- (a) Although the application refers expressly to a wish to televise a poker tournament and to record casino events for social media and promotional purposes, the primary variation sought is very broad and would permit broadcasting and live streaming well beyond the examples given.
- (b) The potential effect of the primary proposal is very significant. Applying the precautionary principle, he opposes the primary proposal, but supports the alternative proposal, which would allow the Commission to exercise control over broadcast or streaming activity by the use of case-by-case approvals.
- (c) A process of case-by-case approvals, with conditions, coupled with the casino's HRP, should be sufficient to address harm.
- (d) What is proposed would not breach any legislative provisions. The Regulations prohibit advertising relating to gaming machine jackpots being visible outside casinos and the use of the word "jackpot" in any casino advertising or branding. As the effect of those regulations is to make permitted jackpot advertising entirely



internal, if the Commission approved any broadcast, the casino would need to ensure that any broadcast or live stream did not breach the Regulations.

Submissions in reply by SCAL

10. The submissions received were referred to SCAL for submissions in reply. In response, SCAL submitted, in summary, as follows:
- (a) In response to the MoH, it points out that arguments that advertising and broadcasting of gambling activity are harmful have not resulted in any legislative restrictions to that effect. The Act prohibits only the local advertising of overseas gambling and the Regulations only restrict jackpot advertising.
 - (b) Despite the former prohibition, advertising of overseas gambling is pervasive on social media but the activity being promoted is unregulated, in contrast to its own activities.
 - (c) MOH's second ground for opposition involves a misunderstanding of the variation proposed.
 - (d) Contrary to PGF's submission, the Act does not impose the restriction in issue.
 - (e) PGF's objection (that relaxing condition 8(a) would lead to breaches of the regulations) is incorrect. The regulations would continue to have full effect.
 - (f) It repeats its 2011 arguments in response to PGF's 2011 submissions.
 - (g) While it would prefer its primary proposal, which would leave decisions about what it broadcasts to its own judgment, the alternative proposal, supported by the Secretary and SA, would be acceptable, especially if non-controversial applications could be dealt with quickly by the Executive Director.

Analysis

11. The application seeks amendment of a standard venue licence condition relating to the external visibility of gambling activity in every New Zealand casino. The condition, in its present form, was imposed on every casino venue licence by the Commission by decision GC32/11, issued on 18 November 2011.
12. Decision GC32/11 set out the history of condition 8(a), as did earlier decision GC15/11 which foreshadowed GC32/11 (and which is quoted from extensively in GC32/11). The prohibition on visibility of New Zealand casino activity is a longstanding one which predates

the Gambling Act 2003 (so did not have its origin in the purposes of that Act). In 2006, in the course of an updating review of all casino venue licence conditions, the Secretary proposed an amendment to condition 8(a) (limiting its effect to visibility from public spaces), to which no other party objected. As a result, it was approved without debate and without any real scrutiny.

13. The liberalising effect of the 2006 amendment was not expressly noticed until it came before the Commission in a SCAL application resulting in decision GC15/11, which sought approval to construct a smoking balcony on which customers could both smoke and play gaming machines (although the Commission had earlier declined to relax full visibility restrictions in an Dunedin Casino application (decision GC05/09)). The Commission expressed concern about the visibility of casino gambling activity in more general terms than were covered by the earlier amended condition 8(a) and notified its intention to review condition 8(a) in every venue licence accordingly (which it subsequently did in decision GC32/11). After SCAL offered to use frosting to ensure that gambling activity on the smoking deck would not be visible externally, it granted the SCAL application.
14. In decisions GC15/11 and GC32/11, the Commission concluded that, as a matter of policy, it should continue the longstanding rule prohibiting visibility of casino gambling outside the premises. The underlying rationale appeared to the Commission to be a mixture of its contribution to the prevention of gambling harm and the minimisation of environmental impact. There was no logical basis to distinguish, for either of those purposes, between external visibility from public and private places. Although the rule had been technically relaxed, without debate, in 2006, no approval had been given to allow any design or construction change which would have permitted external visibility from non-public places, so there had been no reliance in fact on the 2006 rule change.
15. As SCAL notes, all of the earlier Commission decisions in which it considered condition 8(a) have concerned direct, line of sight visibility from areas surrounding the casino. None have considered the possibility of New Zealand casino activity being made visible externally by means of video presentation, accessible at a distance from the casino.
16. Although SCAL is no doubt correct that the original condition, which pre-dates the Act and the Commission, did not contemplate, and accordingly was not aimed at prohibiting, remote broadcasts and video streaming but it was drawn in terms wide enough to capture those activities so the effect of the current condition 8(a) is to prohibit use of video technology to show casino activity externally, outside the casino.
17. Because the proposed activities that have given rise to the present application have not been contemplated and addressed previously by the Commission (or its predecessor), the



application is not necessarily answered by previous decisions and the application calls for a separate policy consideration.

18. What is sought to be permitted, either in all instances without control (if the primary proposal is accepted), or in particular approved circumstances subject to any conditions imposed (if the alternative (case-by-case approval) proposal is accepted), is the broadcast or video streaming of gambling activity inside the particular casino. Condition 8(a) does not prohibit casino gambling advertisements generally nor the showing on-screen of gambling activity, whether simulated in movies and television or a broadcast of an overseas poker tournament. Condition 8(a) is solely concerned with the visibility in New Zealand of New Zealand casino activity outside the casino. Video streaming or broadcasting of gambling in local casinos are means by which visibility may be extended beyond the immediate casino environs and direct line of sight. While broadcast of local gambling activity (if permitted by this decision) could be used for promotional purposes, promotion of gambling is not a prohibited activity *per se*.
19. The Commission does not accept the suggestion by PGF that an absolute prohibition on visibility is required by sections 3(a) and (b) of the Act. The Commission has previously held that the statutory purposes of controlling the growth of gambling and preventing or minimising gambling harm do not require the Commission to take active steps to reduce existing levels of gambling activity or to make gambling itself less desirable. The Commission aims to minimise harm, not gambling. The Commission does not accept the proposition that gambling equates to harm so that all increases in a casino's business (and therefore any activities which have that aim, such as advertising) necessarily involves increases in harm.
20. Both SA and PGF point to the likely effect of external visibility of gambling activity on problem gamblers, who make up a small proportion of the population, and the efforts made in the clinical treatment of problem gamblers to reduce their exposure to gambling "cues". That concern forms part of the rationale for the current control on line of sight visibility. While PGF argues that there is no difference in nature or effect between visibility of activity outside a casino and broadcasting of that activity at a great distance, the Commission's views accord with those expressed in other submissions that the effect is a graduated one.
21. SCAL submitted that current broadcasting activity already contains a large number of gambling cues in the form of depicted or recorded gambling activity, an observation supported by SA, which refers to saturation of the social environment with gambling marketing, such that New Zealand children see on average three gambling advertisements a day. The SA submissions, however, draw a distinction between more general exposure to depictions of gambling, including overseas casino gambling, and exposure by video to



visibility of gambling **at local gambling facilities**. The application is aimed at that latter form of exposure only, which falls somewhere between line of sight visibility outside a casino (where a "cue" can cause a problem gambler to enter the premises) and seeing movies containing casino scenes or broadcasts of overseas poker tournaments.

22. SA is not concerned about the effect of broadcasting or streaming World Poker Tour games played locally, mainly because it regards poker as carrying a relatively low risk of harm. Both SA and the Secretary support case-by-case approvals but are opposed to excluding broadcasts and video streaming from condition 8(a), so that the activities would be largely unconstrained. A major reason for opposing unconstrained broadcasting is the inability to ensure that it would not reach children and other vulnerable audiences, especially if conducted via social media.
23. In its primary application, SCAL seeks the removal, not just of an absolute prohibition, but of any external control over the activity, leaving decisions on acceptable practice to its own internal decision-making, guided by its Host Responsibility Programme ("HRP"). The HRP contains provisions on responsible marketing (section 3.7, HRP) but those controls, in contrast to detection and handling of suspected problem gamblers, are neither highly prescriptive nor subject to recordkeeping and reporting to the Commission. The HRP sets out matters of general guidance, including avoidance of targeting vulnerable groups and the need to exercise care in restricting radio and TV broadcast advertising to times when children are less likely to be exposed (something which is likely to be difficult with the use of social media), but the Commission has no practical visibility of SCML's actual marketing activities (other than the approval of exterior signage on the casino) and the activity concerned has been prohibited absolutely to date.
24. In those circumstances, the Commission is not persuaded that it should approve a licence condition change which would see a currently prohibited activity become externally uncontrolled. The activity over which the Commission is being asked to remove any control is potentially very broad and it is not hard to think of forms of the activity which would be regarded as highly undesirable and potentially harmful. On the other hand, remote broadcast and video streaming of casino activity is not the same as line of sight visibility into the premises and the reasons for maintaining the line of sight visibility do not apply with equal force to broadcasts and video streaming. Simply because it may be acceptable to broadcast play at the Auckland casino as part of the World Poker Tour does not mean that all possible broadcasts and video presentation of casino activity at the Auckland casino would be acceptable.
25. While the Commission is not prepared to make the primary amendment sought, which would leave the activity without any external control, it sees merit in the alternative proposal



which would treat visibility of casino activity similarly to signage on casino exteriors. For similar reasons, the activity would be subject to oversight control by means of approval in advance. One of those reasons is the inherent difficulty in setting prior standards of such definitional clarity that they can be safely and fairly left to licensee interpretation and application.

26. As the Secretary submits, the Regulations will continue to apply irrespective of the amendments to condition 6 and 8(a) and any approval granted. The Regulations prohibit advertising of gaming machine jackpots, so their effect will be to prevent the casino operator allowing internal jackpot advertising to be seen in any broadcast or live stream from the casino.

Decision

27. The Commission varied, under section 139(1)(d) of the Act, conditions 6 and 8 of SCAL's venue licence in order to permit such broadcasts and live streams only with the prior approval of the Commission.
28. Conditions 6 and 8 now read as follows:

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;

- (e) the broadcasting of gambling activity by or on behalf of the Licence Holder via any communication medium or channel.

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) and the broadcasting of gambling activity by or on behalf of the Licence Holder via any communication medium or channel (paragraph (e) above) if satisfied that the proposed initiative(s) will have no potentially adverse effects. The proposed initiative(s) must otherwise be referred to the Commission for a decision on approval.

8. The Licence Holder shall ensure that:
- (a) gambling activity is not visible from outside the Casino Venue unless approved by the Commission pursuant to condition 6(e); and
- (b) there is provision for generation of emergency power to maintain in situations of an interruption to mains power:
- (i) minimum services to the Gambling Area; and
- (ii) lighting in highly sensitive areas such as count rooms, surveillance suite, cashiering locations and gambling equipment storerooms.

Right of appeal

29. 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.



Russell Bell
 Gambling Commissioner

for and on behalf of the
 Gambling Commission

 February 2018

