

**IN THE MATTER** of the Gambling Act 2003  
**AND** on an application by SKYCITY  
Auckland Limited to vary an  
existing approval

**BEFORE THE GAMBLING COMMISSION**

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

Date of Application: 15 April 2016

Date of Decision: 6 May 2016

Date of Notification of Decision: 25 May 2016

**DECISION ON APPLICATION BY SKYCITY AUCKLAND LIMITED TO VARY  
AN EXISTING APPROVAL**

**Introduction**

1. SKYCITY Auckland Limited ("**SCAL**") applied to the Commission to vary an approval granted by the Commission in decision GC03/16. The approval provided by the Commission in that decision is as follows:

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.

**Licence condition**

2. The relevant licence condition is as follows:

**Auckland venue licence**

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 (de) 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.

### **SCAL's submissions**

#### 3. SCAL submitted, in summary, as follows:

- (a) In March of this year, the Commission issued decision GC03/16, which varied licence conditions attached to SCAL's venue licence 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 in that area. Pursuant to the amended condition 6(d), the Commission also granted a general approval of signage outside the Auckland casino, provided that certain criteria were met.
- (b) The approval was consistent with the information that SCAL had supplied to the Commission and in particular, SCAL's understanding that the signage was only ever used to advertise the restaurants' food and beverage offerings. However, since the Commission's decision, it has come to SCAL's attention that the restaurant chalkboards are also used on occasion for wider purposes. For example advertising live music, advertising special events such as a customer's birthday, or to include certain catch phrases, such as 'open 'til late'.



- (c) There are likely to be practical difficulties in having to apply for approval of signage of this kind, particularly at short notice and over weekends. However the terms of the Commission's current approval are not wide enough to encompass these messages and accordingly, SCAL either needs to instruct the restaurants to desist from what has been a longstanding practice, or ask the Commission to consider a more broadly worded approval. In terms of the latter option, its preference would be for the Commission to remove criteria paragraph (b) from the current approval.
- (d) This would mean that any chalkboard signage which did not contain direct or indirect references to gambling, the casino business, or to SKYCITY would be permitted.
- (e) That said, it is conscious of the fact that the Commission has previously declined to specify conditions which would see such signage excluded from its jurisdiction and accordingly it may not be willing to grant a general approval pursuant to the conditions on these terms. If that is the case it asks that the Commission varies paragraph (b), to provide as follows:

- (b) The content of the sign is limited to:
  - (i) advertising food and beverage sold by the particular restaurant in the form of the display of menu items and specials available at the restaurant;
  - (ii) advertising entertainment, performances or events taking place at the particular restaurant in the form of the display of entertainment or event listings, dates and times at the restaurant;
  - (iii) advertising the trading hours of the particular restaurant;
  - (iv) welcome, celebratory or congratulatory messages (for example, to celebrate a diner's birthday or welcome in the New Year); and/or
  - (v) general messages designed to contribute to the overall design and theming of the particular restaurant (for example, a quote of the day).

#### **The Secretary's submissions**

- 4. The Secretary had no regulatory concerns with SCAL's proposal, either to remove paragraph (b), or to vary it. However, he was of the view that the option of varying paragraph (b) would more closely align with the reasoning and objectives set out in decision GC15/15 (namely, that it is not always easy to categorise signage unambiguously either as "gambling" or "non-gambling" and that there is always a degree of subjectivity when considering the appropriateness of signage displayed at a casino).



### Analysis

5. Earlier this year, the Commission proposed to amend licence conditions 4, 5, 6 and 7 of SCAL's venue licence in order to incorporate level 7 of the Grand Hotel as an area requiring Commission approval prior to SCAL undertaking any construction and design changes to that part of the casino.
6. Within its submissions on that proposal, SCAL also made submissions in relation to the implications of extending the signage requirements of the licence conditions, which would apply to a number of restaurants in Federal Street. 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, and if these constituted "signage", SCAL would be at risk of regular breach of condition 6(d) by restaurant staff amending them without Commission approval.
7. SCAL submitted that its preference was to amend the licence condition to remove all control over non-gambling signage.
8. The Commission declined SCAL's proposal, but provided a general approval for a tightly defined class of signage, which meant that individual approval of each sign in the class is no longer be required. The approval was 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 the casino business.
9. At paragraph 18 of decision GC03/16, the Commission noted that if unexpected problems were to eventuate with the operation of the approval, the approval may be withdrawn or its terms modified.
10. The Commission then provided the general approval, in the form set out in paragraph 1 above. SCAL has now applied to remove paragraph (b) of that approval, or to vary it.
11. The Commission noted SCAL's preference to remove paragraph (b) but, for the reasons set out in decision GC03/16 and decision GC15/15, it wants to maintain oversight over signs erected on or around the Auckland casino. However, the proposed variation to paragraph (b) raised no issues of regulatory concern for the Commission (or the Secretary), and the Commission amended the earlier approval accordingly.

### Decision

12. The Commission varied the approval previously provided, and set out in paragraph 27 of decision GC03/16. Pursuant to condition 6(d) of SCAL's venue licence, the Commission 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:
  - (i) advertising food and beverage sold by the particular restaurant in the form of the display of menu items and specials available at the restaurant;
  - (ii) advertising entertainment, performances or events taking place at the particular restaurant in the form of the display of entertainment or event listings, dates and times at the restaurant;
  - (iii) advertising the trading hours of the particular restaurant;
  - (iv) welcome, celebratory or congratulatory messages (for example, to celebrate a diner's birthday or welcome in the New Year); and/or
  - (v) general messages designed to contribute to the overall design and theming of the particular restaurant (for example, a quote of the day).
- (c) The sign contains no direct or indirect reference to gambling or to the casino business, including any reference to SKYCITY.

### Right of appeal

13. 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

25 May 2016

  
**GAMBLING  
COMMISSION**