

IN THE MATTER of the Gambling Act 2003

AND on an application by **SKYCITY AUCKLAND LIMITED** for approval of construction and design changes to create an enlarged smoking deck and to redesignate the Gambling Area at the Auckland casino

BEFORE THE GAMBLING COMMISSION

Members: S W Hughes KC (Chief Gambling Commissioner)
S C L Pearson
W A Acton
S T Shaw
C M Risk

Date of Application: 13 December 2024

Date of Decision: 16 May 2025

Date of Notification
of Decision: 5 June 2025

DECISION ON AN APPLICATION BY SKYCITY AUCKLAND LIMITED FOR APPROVAL OF CONSTRUCTION AND DESIGN CHANGES TO CREATE AN ENLARGED SMOKING DECK AND TO REDESIGNATE THE GAMBLING AREA AT THE AUCKLAND CASINO

Introduction

1. SkyCity Auckland Limited ("**SCAL**") applied to the Commission:
 - (a) for approval of construction and design changes to build an enlarged smoking deck on level 3 of the Auckland casino, under conditions 6 and 7 of SCAL's venue licence; and
 - (b) to redesignate the Gambling Area to include the proposed enlarged smoking deck, under condition 9 of SCAL's venue licence and section 139(1)(d) of the Gambling Act 2003 ("**Act**", all references are to this Act unless otherwise indicated).
2. If approved, the deck will be constructed outside the Baccarat Room on level 3 and will sit on top of the roof of level 2 of the Casino. SCAL intends to use the deck as an open area (or smoking deck) for gambling activity. The existing (smaller) smoking balcony will become internal space on level 3.
3. Condition 9 of SCAL's licence fixes the designated Gambling Areas for the Casino, by way of plans attached in Schedule 1. Alternative Gambling Areas for levels 2 and 3 of the Casino, and level 7 of the Grand Hotel, are delineated in the plans attached in Schedule

2. SCAL proposed a variation to schedules 1 and 2 to reflect the proposed new outdoor Gambling Area.
4. The application did not include an application for approval of a new floor plan showing the location of any gambling product in the area sought to be designated. It did include a provisional indication of possible gaming machine locations (without indicating the current location of those EGMs). SCAL advised that it intends to submit a finalised floor plan for approval only once construction is completed. If this application is granted and the deck is built, it will not be able to be used for gambling until a floor plan covering the new deck is separately approved by the Commission. The Commission's decision on this application cannot be taken as an indication that the later submitted floor plan will be approved.

Licence and statutory provisions applying to the application

5. SCAL's application is for approval of construction and design changes under conditions 6 and 7 of SCAL's venue licence, and to redesignate the Gambling Areas referred to in conditions 9 and 9A. Condition 5 provides for the Commission to hold a set of current "as built" architectural floor and structural plans for the parts of buildings which contain designated Gambling Areas. Condition 6 imposes an obligation to obtain the Commission's prior approval for construction and design changes, while condition 7 sets out the process for approval of construction and design changes. Condition 8 imposes an obligation, regarding visibility of gaming activity, of relevance to the operation of open areas for gambling.
6. The relevant parts of conditions 6, 7 and 8 are set out below:

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); ...

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 ... including the Gambling Area (paragraphs (a) and (b) above) is set out in condition 7.... 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... 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

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);

7. Condition 9 provides for the Gambling Area of the Casino to be delineated in plans attached to the licence. "Gambling area" is defined, in the case of a casino, as that part of the venue that is specified by the Commission, under section 139, as an area where casino gambling is permitted. The proposed area is within the defined casino venue.

8. While the construction and design changes merely seek approval under a licence condition, redesignation of the Gambling Area requires amendment of the licence conditions in the form of replacement Gambling Area plans. The following sections of the Act are applicable:

3 Purpose

The purpose of this Act is to—

- (a) control the growth of gambling; and
- (b) prevent and minimise harm from gambling, including problem gambling; and
- (c) authorise some gambling and prohibit the rest; and
- (d) facilitate responsible gambling; and
- (e) ensure the integrity and fairness of games; and
- (f) limit opportunities for crime or dishonesty associated with gambling and the conduct of gambling; and
- (g) ensure that money from gambling benefits the community; and
- (h) facilitate community involvement in decisions about the provision of gambling.

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 purpose 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).

140 Procedure for specifying, varying, or revoking casino licence conditions

- (1) The Gambling Commission must notify the holder of the relevant casino licence, the Secretary, and any other person who it considers is affected by a proposal to specify, vary, or revoke the conditions of a casino licence.
- (2) Notification under subsection (1) must include—
 - (a) the reason for the proposal; and
 - (b) the procedure to be followed before the Gambling Commission makes a decision relating to the proposal.
- (3) The holder of the casino licence, the Secretary, and any other person affected may make written submissions to the Gambling Commission concerning the proposal within 20 working days after the date of the notice under subsection (1) or within any longer period that the Gambling Commission allows.
- (4) The Gambling Commission must consider any submissions made under subsection (3) and may, if it considers it appropriate, seek comment from the casino licence holder on the submissions received from the Secretary or other persons affected.
- (5) The Gambling Commission must notify the holder of the casino licence, the Secretary, and other persons affected of—
 - (a) its decision concerning the proposal and the reasons for the decision; and
 - (b) the right to appeal the decision and the process for an appeal.

9. The application was made against the background of the Smoke-Free Environments Act 1990 ("**Smoke-Free Act**"), which describes, in section 13A, the effect of the Smoke-Free Act on casinos, as follows:

13A Smoking in casinos

- (1) The holder of the casino operator's licence in respect of a casino must take all reasonably practicable steps to ensure that no person smokes at any time in any part of the casino that is not an open area.
- (2) Subsection (1) does not prevent the holder of the casino operator's licence in respect of a casino from prohibiting smoking in a part of the casino that is an open area.
- (3) No person may smoke at any time in any part of a casino that is not an open area.

Procedures followed

10. The procedural requirements set out in section 140 have been followed. The Commission invited written submissions from PGF Group ("**PGF**"), Asian Family Services ("**AFS**"), Mapu Maia, Auckland Council, the Secretary of Internal Affairs ("**Secretary**") and the Ministry of Health (which advised that the National Public Health Service – Northern Region ("**NPHS**") of Health New Zealand would be the most appropriate party to make submissions on matters of public health). The Commission also invited submissions from Action for Smoke Free 2025 ("**ASH**"), the Cancer Society, Hapai Te Hauora ("**HTH**") and Whare Tiaki Hauora.
11. The entities first approached above were given 23 working days to respond, allowing more days than usual owing to the Christmas and New Year break. PGF requested, and was granted, an extension of time to file submissions. The date that submissions were due to be filed was then 26 February 2025. In the meantime, the Commission had engaged Professor Paul Delfabbro to provide it with a report on the current academic literature on the inter-relationship between smoking and gambling ("**Delfabbro report**").
12. The Commission received submissions from AFS, ASH, the Secretary, PGF, NPHS and HTH. Those submissions were sent to SCAL, which was invited to file submissions in reply. The Commission also sent the Delfabbro report to the parties who had made submissions, and to SCAL as the applicant. The Secretary filed supplementary submissions in response to the Delfabbro report. SCAL's response to the Delfabbro report formed part of its reply submissions. No other submitter responded to the Delfabbro report.

Previous decisions of the Commission

13. The Commission has issued four previous decisions on the intersection between smoking and gambling. The first two decisions were appeals relating to the Kilbirnie Tavern, a class 4 venue, in 2007(GC03/07) and 2010 (GC31/10) ("**Kilbirnie Tavern decisions**"). The Commission later issued decisions in 2011 on gambling in open areas at the Auckland casino and the Dunedin casino (decisions GC15/11 and GC21/11). The Commission's decision on an application to swap table games for EGMs at the Hamilton casino (decision GC16/20) was not concerned with smoking while gambling but did set

out the Commission's considered approach to its statutory obligations regarding harm minimisation when considering applications to vary casino licence conditions.

Kilbirnie Tavern decisions

14. The Kilbirnie Tavern decisions followed the imposition by the Secretary of class 4 licence conditions prohibiting patrons from being able to smoke while gambling. The new conditions followed the commencement of the Smoke-free Act and the creation of an open area for EGM gambling at the venue. The licence holder, The Lion Foundation, appealed the decisions to impose the conditions to the Commission.
15. In the 2007 Kilbirnie decision, the Commission reversed the decision of the Secretary, removing the condition. In submissions, while the Secretary had imposed the condition pursuant to section 70(2)(g), it was argued that it could also be justified under sections 67(1)(p), (r), 70(2)(g), (h) or (i). The Commission held that section 67 was not relevant because the condition was not imposed on the grant or renewal of a licence. The Commission noted that section 70(2)(i) was a rarely used general provision and that the new condition did not fit within the other sub-sections. The Commission went on to consider whether the imposition of the condition was "fair and reasonable in the circumstances."
16. The Commission concluded that the asserted justification for the condition relied on two cumulative assumptions, the first that breaks in play have the effect of minimising harm to problem gamblers and the second that restricting smoking would compel problem gamblers who smoked to break their gambling periods. The Commission considered that insufficient evidence had been provided about the assumed effects of restrictions on the two correlated activities, noting that there were many other co-relationships with problem gambling. It considered that the condition was unlikely to deliver the intended benefit.
17. The 2007 Kilbirnie decision was challenged in *The Secretary for Internal Affairs v Kilbirnie Tavern Limits & Ors* (HC Wellington CIV-2007-485-1988, 14 November 2008), an application to the High Court by the Secretary for declarations by the Secretary regarding the renewal of The Lion Foundation licence for Kilbirnie. The decision considered the practice of gambling in open areas where patrons could also smoke and the effect that would have on problem gamblers. The Court held that licence conditions needed to strike a balance between minimising the harm to problem gamblers, while recognising that gambling was permitted. The Court noted that the scheme of the Smoke-free Act appeared to allow, and perhaps indeed contemplated, class 4 gambling and smoking co-existing in open areas.
18. The 2010 Kilbirnie decision was a subsequent appeal by The Lion Foundation against a later decision by the Secretary to impose a similar special condition in the class 4 licence

for Kilbirnie Tavern prohibiting smoking in areas where there were gambling machines. The Secretary provided more detailed submissions and supporting material than had been the case in 2007. Nevertheless, the Commission concluded that the condition was not appropriately imposed and reversed the decision to impose it. It considered that the imposition of the condition was unlikely to have a material positive effect on problem gambling but would negatively affect the enjoyment of regular patrons while gambling, a legal activity. It considered that the condition imposed by the Secretary was an attempt to effect a change that was legislative in substance as gambling in open areas was an express statutory exception provided by the Smoke-free Act.

SkyCity Auckland decision GC15/11

19. The decisions above concerned class 4 gambling. The Commission first considered the issues arising from smoking while gambling in casinos when determining a similar application to the present one by SCAL, in decision GC15/11. The applicant wished to develop an outdoor gaming area on level 2, where patrons could smoke while playing gaming machines. As the proposal did not increase the size of the Gambling Area and involved the relocation of existing gaming machines, the Commission was satisfied that it did not increase the opportunities for casino gambling.
20. The Commission considered, on the evidence presented, that there had been no material research developments since the Kilbirnie decisions; while there was a partial correlative relationship between smoking and problem gambling, it had not been established to be causative. The Commission noted section 13A of the Smoke-free Act, which allowed smoking in open areas at casinos, and the discussion in *The Secretary for Internal Affairs v Kilbirnie Tavern Limited*. It considered that smoking should be allowed if it is consistent with the Act and will not exacerbate the potential for harm and that prohibiting smoking while gambling would be an overly cautious approach.
21. The decision also discussed the need to ensure that gaming activity was not visible from anywhere outside the casino and noted that the then current condition 8(a) would need to be amended for that reason. The amendment was subsequently made and the condition is shown in its current form in paragraph 6 above.

Dunedin Casino Decision GC21/11

22. In 2011, Dunedin Casinos Limited and Dunedin Casino Management Limited applied to the Commission for approval of a new floor plan that would include gaming machines on the casino's smoking balcony and two gaming machines at the entrance to the smoking balcony.

23. The Commission approved the proposed changes to the floor plan, which had the effect of allowing patrons to smoke while gambling. The reasons given reflected those given in decision GC15/11.
24. Since those decisions, the Commission has granted approvals concerning outdoor areas where patrons can smoke and gamble in decisions GC05/13, GC29/13, GC06/18, GC11/18, GC23/18, GC01/19 and GC04/20.

Hamilton EGM decision GC16/20

25. The Commission was required to consider its statutory obligations regarding harm minimisation when considering an application to vary the conditions of the operator's licence for the SkyCity casino at Hamilton which sought changes to the game mix (replacing Blackjack table games with electronic gaming machines ("EGMs")), and related casino design change and floor plan. While the decision did not address the intersection between smoking and gambling, after hearing extensive expert evidence on gambling harm, the Commission considered in detail an element of the statutory purpose (preventing and minimising harm from gambling) and the extent to which that element should affect decisions on applications to vary casino licence conditions. The Commission held as follows:
- (a) Preventing and minimising harm is one element of eight in the purpose section (section 3(b)). The entire purpose section should not be read as being subject overall to the harm minimisation element, as it is common ground that gambling is not risk free and that all forms of gambling carry some risk of harm.¹
 - (b) Another statutory purpose is to authorise some forms of gambling and not others. While EGMs are known to be harmful compared to some other authorised forms, they are still authorised by the Act.²
 - (c) The effect of the harm minimisation element in section 3(b) does not limit the Commission to making decisions which exclude all possibility of harm resulting from gambling which the Act authorises.³
 - (d) The Commission's statutory role includes control of opportunities for casino gambling, under which it determines whether an increase in one gambling activity is proportionate to the removal of another activity.⁴ In that role, the

¹ Decision GC16/20 at 10.49(c).

² At 10.49 (d).

³ At 10.49 (e).

⁴ At 10.49 (f).

Commission does not assume that, if a casino wishes to exchange opportunities, the proposed exchange will favour a less popular game type.⁵

- (e) The usual aim of an application to exchange casino gambling opportunities is to increase overall gambling activity at the casino by increasing the availability of more attractive gambling opportunities in the place of less popular opportunities. While, all things being equal, an overall increase in gambling activity can be expected to result in more gambling harm overall, exchanges of opportunities should not be declined simply because the exchanged activity would likely be more popular and result in an increase in gambling.
- (f) The position might be different if the new exchanged activity were inherently more likely to increase gambling harm than the former activity but, on the evidence, the two forms of gambling activity concerned were assessed overall as being similarly harmful.

Report on literature review on smoking and gambling

- 26. The Commission engaged Professor Paul Delfabbro, an academic psychologist with expertise on gambling disorders, to review and report on the academic literature relating to concurrent gambling and smoking. The Commission was principally interested to understand the extent to which research established the likelihood that problem gambling would reduce if smoking and gambling at the same time were prohibited.
- 27. The Delfabbro report summarised the results of a literature review which covered 27 studies relating to the relationship between smoking and gambling. In summary, Professor Delfabbro advised as follows:
 - (a) Most studies used small sample sizes, with many using simulated gambling tasks, nicotine patches and measures of impulsive decision-making.
 - (b) Some studies of smokers deprived of smoking for extended periods suggested that abstinence increased impulsivity and reduced cognition, indicating that any reduction in long term risk might be at the cost of increased risk in the short term.⁶
 - (c) The results of prevalence studies were mixed – a Victorian study showed no causal link between smoking and problem gambling, but a Canadian study indicated that the use of tobacco while gambling resulted in self-reported

⁵ At 10.49 (g).

⁶ Report of Professor Paul Delfabbro at pp 4 – 5.

reduction in remission or resolution of smoking problem gamblers, in a manner not dependent on breaks in play.⁷

- (d) Self-reported perceptions and expectations included that smoking made smokers feel luckier and more skilful, increased concentration, reduced anxiety, and increased confidence. Problem gamblers who smoked e-cigarettes were twice as likely to report using them while gambling compared to those who were not problem gamblers. Problem gamblers who smoke heavily will chose to gamble elsewhere if a smoking ban is introduced at a venue. Problem gamblers are more likely to smoke than other gamblers and prefer venues where they can smoke.⁸ However, these studies provide mixed evidence overall that there is a link between gambling harm and smoking. While they indicate that smokers are happier when they can smoke while gambling, which will likely lead to longer sessions, it is unclear whether smoking leads to higher risk gambling behaviours.
- (e) Studies on the effect of smoking bans generally (but not invariably) indicate reduction in gambling activity but they did not differentiate between the effect on gambling and on problem gambling.⁹ There is little evidence to support the thesis that the higher than normal rates of smoking among problem gamblers leads to problem gamblers taking more breaks to smoke if the venue is smoke-free.

28. On the key question – does allowing people to smoke while gambling increase problem gambling? – Professor Delfabbro was of the view that there are limited data available. Nevertheless, he suggested that it is possible to draw the following general conclusions:

- (a) Smoking makes gambling more enjoyable and rewarding for those who like to do both. That can be expected to increase the likelihood of gambling for longer sessions, possibly leading to losing track of time.¹⁰
- (b) It is likely that both activities are mutually reinforcing.¹¹
- (c) Smoking may operate as a form of fill-in behaviour which maintains players experiencing low rewards, leading to longer sessions and greater expenditure. It may also provide extra stamina to chase losses.¹²

⁷ At pp 5 – 6.

⁸ At pp 6 – 7.

⁹ At p 7.

¹⁰ At pp 8.

¹¹ At pp 8.

¹² At pp 9.

- (d) Because problem gamblers have higher rates of smoking than other gamblers, these experiences may be more strongly observed in high risk gamblers and that may explain why smoking and gambling may be seen as a barrier to remission.¹³
 - (e) There is evidence that depriving gamblers of smoking may adversely affect decision-making and lead to more risky behaviour (although the studies are laboratory based, with longer periods of abstinence than likely in real life).¹⁴
29. Professor Delfabbro suggested that, if any increase in harm from allowing smoking and gambling simultaneously arises from longer gambling sessions (as some research suggests), mandated breaks in play might offset that risk. On the material available to him, Professor Delfabbro considered that the currently mandated breaks in play at the Auckland casino (after 5 hours) would be less frequent than the breaks which a highly addicted smoker might be expected to take (possibly every hour). If so, the current rules may not match the breaks that smokers would take if they cannot smoke and gamble simultaneously and a lower threshold for breaks may be appropriate for gamblers able to smoke.¹⁵

Submissions

SCAL submissions

30. SCAL filed its initial written submissions with the application. The proposed changes involve the construction of a deck outside the Baccarat Room on Level 3 of the Casino, which would result in expansion to the Gambling Area. The newly constructed deck would sit on top of the roof of Level 2 of the Casino. Entry would be through a new wind lobby to be constructed within the current Baccarat Room. The reason for the proposed change is to allow patrons to smoke while playing gaming machines.
31. Appendix 1 of the submissions outlined the nature of the proposed changes and provided an indication of the possible gaming machine locations. SCAL advised that it intended to submit a finalised floor plan at a later date because the resulting construction and design changes would take some time to complete, such that it was not feasible to submit floor plans for approval at this stage.
32. The construction of the deck would include additional CCTV cameras to allow for extra surveillance of gaming machines. SCAL accepted that it must ensure that no gambling activity is visible from outside the casino and submitted that the proposed changes would have no adverse impact on the matters specified in condition 7 of the licence.

¹³ At pp 9.

¹⁴ At pp 9.

¹⁵ At pp 8–10.

Secretary's submissions

33. The Secretary filed only a brief submission, noting that SCAL must ensure that gambling activity at the new designated Gambling Area is not visible from outside the venue. The Secretary reviewed the floor plans, schedule and appendices and had no regulatory concerns with the application as it complied with SCAL's licence conditions.

NPHS submissions

34. Submissions opposing the application were received from NPHS. NPHS is an operating service of Health New Zealand, a Crown agency. It has a range of regulatory and non-regulatory roles and functions related to public and environmental health. The NPHS submissions set out three reasons for opposing the application:
- (a) Evidence has shown that there is a relationship between gambling and nicotine dependency whereby people who smoke are more likely to gamble at harmful levels than people who do not smoke. Greater harm could result by allowing people who are already at risk of problem gambling to smoke at the same time.¹⁶
 - (b) There is concern that enabling people to smoke while playing would remove breaks in play that smoking patrons would otherwise take to have a cigarette.¹⁷
 - (c) SCAL provided insufficient detail about the intended use of the new balcony. There are currently seven EGMs on an existing deck, but the application does not provide this level of detail for the new balcony.¹⁸

PGF submissions

35. PGF made submissions in opposition to the application, arguing that it would likely result in longer gambling sessions, higher financial losses and greater difficulty for self-regulation of patrons. PGF set out four distinct reasons for opposing the application:
- (a) A focus of the Act is to prevent and minimise harm from gambling. Condition 7(c) of the licence provides for the importance of harm minimisation. A significantly larger deck would allow smoking gamblers to continue gambling while smoking or vaping rather than having a break from play if they were required to leave the gambling room for a smoking break. Breaks in play are important and a well-known harm minimisation measure.¹⁹

¹⁶ NPHS-NR submissions pp 2-3.

¹⁷ NPHS-NR submissions p 3.

¹⁸ NPHS-NR submissions pp 3-4.

¹⁹ PGF submissions at [1] – [6]. PGF provided no citation for this claim.

- (b) There are shared psychological factors between gambling and smoking such as anxiety and depression. Research also shows that smokers are more likely to engage in high risk gambling behaviours²⁰ and the MOH recognises that harmful gambling often co-occurs with other addiction issues.²¹
 - (c) The application does not align with New Zealand's aspiration to be smokefree by 2025; the provision of places such as the proposed new smoking deck normalises smoking.²²
 - (d) Gambling disproportionately affects Māori, Pacific peoples, Asian peoples and young people; Māori and Pacific peoples are similarly disproportionately represented among smokers. The disproportions indicate that there are public health risks posed by the proposed smoking deck. PGF argued that SCAL has an obligation to uphold the principles of the Treaty of Waitangi.²³
 - (e) In the discharge of their host responsibility obligations, casino operators should not allow the consumption of nicotine products while gambling. Although SCAL is currently working on establishing mandatory carded play at the Casino, personal welfare checks on smoking and gambling decks should continue.²⁴
36. PGF opposed the application but, in the event that it is granted, the number of smoking and gambling decks at the Casino should be capped to reduce public exposure to harm.²⁵

AFS submissions

37. Submissions from AFS reflected the views of the Asian Family Services' Preventing and Minimising Gambling Harm Peer Support Team, which is said to consist of individuals with lived experience. AFS submissions set out the following concerns with the application:
- (a) Allowing patrons to smoke while gambling creates an environment that reinforces dual addictions, leading to prolonged gambling sessions and reducing the likelihood of natural breaks. SCAL has not established how it proposes to mitigate the risk of heightened gambling participation due to the proposed changes.²⁶

²⁰ PGF submissions at [8].

²¹ PGF submissions at [9].

²² PGF submissions at [7] – [11]. However, there is nothing in the smokefree 2025 plan that refers to reducing the number of people who smoke by not allowing gambling to take place at the same time as smoking.

²³ PGF submissions at [12] – [17].

²⁴ PGF submission at [18] – [20].

²⁵ PGF submission at p 4.

²⁶ AFS submission at p 1.

- (b) Allowing smoking while gambling reduces the natural breaks which would occur during gambling in a non-smoking area. The breaks create opportunities for reflection and financial reassessment. The proposed design contradicts section 11 of the Act that emphasises gambling must not be conducted in a manner inconsistent with the public interest.²⁷
- (c) The application lacks detail about increased host responsibility measures to offset the risks and additional training of staff members. SCAL should be required to outline clear harm minimisation strategies.²⁸
- (d) The failure to provide detailed proposed floor plans means there is no way to verify whether the final layout will exceed existing gambling space limits. Applications of this nature require full transparency.²⁹

HTH submissions

- 38. Submissions were filed by HTH, which is not part of MOH or Health New Zealand, but says it is the largest Māori public health organisation in New Zealand, which aims to prevent and minimise harm to Māori through a collaborative relationship with regional public health services throughout New Zealand. HTH opposed the application.
- 39. The submission raised significant health concerns for Māori communities as the proposed change contradicts efforts to reduce smoking prevalence and exposes casino employees to harmful second hand smoke.³⁰ HTH emphasised the need to obscure the gambling activity on the deck from external view,³¹ and suggested a comprehensive review of the proposed changes and consultation with relevant stakeholders.³² It argued that approving the smoking deck would contradict the goals of smokefree 2025.³³
- 40. HTH made the following recommendations:
 - (a) Conduct a Health Impact Assessment to evaluate the potential effects of the deck on smoking, vaping and alcohol consumption among patrons, particularly Māori.³⁴

²⁷ AFS submission at p 2. The reference to section 11 is not correct because that section deals only with opportunities for casino gambling.

²⁸ AFS submissions at p 2.

²⁹ AFS submission at pp 2-3.

³⁰ HTH submissions at [7].

³¹ HTH submissions at [9].

³² HTH submissions at [10].

³³ HTH submissions at [11].

³⁴ HTH submissions at [13].

- (b) Implement health and safety policies to protect casino employees from harmful smoke exposure.³⁵
- (c) Increase the outreach and support services tailored for Māori, by collaborating with local health providers to establish support systems for those effected by gambling harm.³⁶
- (d) Implement regular audits to ensure the enforcement of visibility controls and launch campaigns that specifically target the risks associated with gambling for younger audiences.³⁷
- (e) Involve and consult with Māori health professionals to ensure that their views guide the assessment of the proposed changes.³⁸
- (f) Carry out an assessment of economic benefits versus potential health costs associated with extending the Gambling Area, taking a holistic view. Guidelines should be established that place health and wellbeing above economic interests in relation to gambling area redesignations.³⁹

ASH submissions

41. ASH made submissions in opposition to the application, with the rationale informed by its interpretation of the conditions attached to SCAL's licence, public health evidence and wider societal trends around tobacco use. In summary, ASH submitted as follows:

- (a) The creation of a larger smoking and gambling deck would increase the Casino's capacity to provide for smoking patrons, which would result in gambling for longer periods and would remove the incentive to break from gambling to smoke.⁴⁰
- (b) Increasing the size and appeal of the Gambling Areas would be marketing and catering directly to people who have a nicotine addiction,⁴¹ despite a well-documented relationship between smoking and problem gambling.⁴²
- (c) Staff may breathe in second-hand smoke which may breach s 30 of the Health and Safety at Work Act 2015 if it creates health risks for staff. The only way to

³⁵ HTH submissions at [14].

³⁶ HTH submissions at [15].

³⁷ HTH submissions at [16].

³⁸ HTH submissions at [17].

³⁹ HTH submissions at [18]. HTH did not provide any details for this recommendation. It is unclear what economic benefits are referred to or who would undertake the assessment.

⁴⁰ At section 1.

⁴¹ At section 2(i).

⁴² At section 2(j).

prevent staff exposure to second-hand smoke would be for the deck not to be built.⁴³

- (d) The deck would permit an increase in opportunities for smoking as the deck appears to increase the gaming floor by roughly 130m² and the smoking decks by 500-600%.⁴⁴ The resulting expansion would be inconsistent with Auckland Council's goals of reducing gaming machine volumes.⁴⁵
- (e) Smoking causes harm generally and smoking and gambling causes disproportionate harm to Māori and Pacific Peoples.⁴⁶
- (f) The proposal to build the deck undermines New Zealand's Smokefree 2025 goal,⁴⁷ when smokers are already well catered for because there are currently 12 smoking balconies.⁴⁸
- (g) A vaping deck would not be a viable alternative if the Commission rejected the smoking deck proposal.⁴⁹

SCAL reply submissions

- 42. SCAL made submissions in reply to the foregoing submissions and in response to the Delfabbro report.
- 43. SCAL denied suggestions that the smoking deck would result in additional EGMs at the Casino. No increase in the overall number of EGMs permitted at the Casino had been sought.⁵⁰ SCAL clarified its intention to apply later for approval of a new floor plan that would increase the number of EGMs in areas where people could smoke and vape (but not an increase in the total permitted number of EGMs) by 20 to 25 machines (about 16 to 19 percent).⁵¹
- 44. In response to submissions addressing the research on smoking while gambling and the possible effects of breaks, while accepting that people who smoke or vape can be problem gamblers, SCAL argued that the research described did not link an increase in space for smoking while gambling to increases in problem gambling.⁵² The research referred to

⁴³ At section 7.

⁴⁴ At section 3.

⁴⁵ At section 8.

⁴⁶ At sections 4 and 5.

⁴⁷ At section 10.

⁴⁸ At section 11.

⁴⁹ At "a note on smoking and vaping."

⁵⁰ SCAL reply submissions at [11].

⁵¹ At [4].

⁵² At [18].

linking bans on smoking or vaping in casinos to an overall reduction in gambling, without drawing a distinction between gambling and problem gambling.⁵³ In that regard, SCAL argued that there was no conclusive evidence that naturally occurring smoking breaks had any effect on problem gambling.⁵⁴

45. SCAL submitted that, while the Delfabbro report had reviewed a wider set of papers than the opposing submitters, it did not record anything specifically on smoking and problem gambling having a causative relationship.⁵⁵
46. SCAL referred to a 2011/2012 New Zealand Health Study that found 57.7% of those who identified as either problem gamblers or at moderate risk were also smokers. As problem and moderate risk gamblers combined made up only a 1.2% of the population in the study, combining those figures indicated that just under 0.7% of the population would fall into both categories. As 18.5% of non-problem gamblers were also smokers, and that group made up about 49% of the whole population, combining these figures suggested that 9% of the population both smoke and are non-problem gamblers.⁵⁶ The comparison suggested that the effect of a lack of smoking facilities would fall mainly on non-problem gamblers.
47. SCAL argued that any problematic behaviours in actual gambling are subject to monitoring by the Focal system that runs on EGMs and that the application was not the proper vehicle for a review of continuous play and long play thresholds.⁵⁷
48. SCAL argues that the application does not warrant any changes to the Casino's HRP because an existing deck is simply being replaced by a larger one. The suggestion that HRP changes were required arises from a misunderstanding of what is proposed, as the actual floorplan of the new deck will require a separate application. The existing harm reduction strategies already take into account the fact that patrons can smoke and gamble in the same area.⁵⁸
49. The proposed smoking deck is aligned with legislation and government policy on smoking. The Smoke-Free Act only prohibits casino operators from permitting smoking in any part of the casino that is not an open area.⁵⁹ Suggestions that the deck could cause harm to SCAL employees is a health and safety matter for SCAL, not the Commission.⁶⁰

⁵³ At [20] – [22].

⁵⁴ At [23].

⁵⁵ At [25] – [27].

⁵⁶ At [30].

⁵⁷ At [36] – [37].

⁵⁸ At [39] – [41].

⁵⁹ At [44].

⁶⁰ At [46].

50. While some of the submitters represent vulnerable groups, the application is not an appropriate forum to discuss policy development to help these groups.⁶¹

Secretary's response to the Delfabbro report

51. The Secretary submitted that the report confirms the existence of research establishing that problem gamblers are much more likely to smoke than other gamblers. That conclusion can lead to an inference that a gambling harm minimisation benefit of smoke-free policies may be that gamblers who smoke take more frequent breaks in order to smoke.
52. The Secretary referred to the Delfabbro report conclusion that it is not clear that the current mandated breaks in play, as is required under the HRP, would be sufficient to allow for the same number of breaks in play when people are unable to smoke when gambling. The Secretary noted that this aligns with the view that mandated breaks should be a 30 minute uninterrupted break rather than accumulated shorter breaks and that this has already been imposed in the HRP of the Christchurch and Dunedin casinos.
53. Finally, the Secretary suggested that, to identify problem gamblers, a three hour limit in continuous play should be considered for the HRP rather than the current five hours. This would be consistent with regulations 14(2) and 15(2) of the Gambling (Harm Prevention and Minimisation) Regulations 2004 which require personnel to interact with a player who has been playing continuously during nine or more sweeps of the Gambling Area. The Secretary referred to research by Dr Sally Gainsbury on the effects of duration and breaks in play to support this.⁶²

Discussion

54. It is important to clarify the Commission's role generally and more specifically in relation to the application. The Commission's role is defined by the Gambling Act which makes no reference to smoking or its adverse health effects. The Smoke-Free Act, which governs control of smoking in public venues, makes express provision for smoking facilities at casinos. The Commission has no role to play in the administration of the Smoke-free Act. Neither audits nor approvals of the designation of open areas come within its role. An important consequence of its limited role is that approval by the Commission of construction of a deck intended to be used as an open area for smoking and its designation as a Gambling Area carry no implication or representation that it meets the requirements of the Smoke-Free Act to be an open area.

⁶¹ At [48].

⁶² As the Secretary did not provide a copy of the report to the Commission, it is unable to have regard to its contents.

55. The position is similar with the Health and Safety at Work Act 2015, and the suggestion that a smoking deck will increase the health risks to casino staff from second hand smoke. Obligations under health and safety legislation do not come within the role of the Commission.
56. For the same reason, the Smoke-free 2025 programme is not relevant to this application. In addition, Smoke-free 2025 sets out three key outcomes – to eliminate inequalities in smoking rates and smoking-related illnesses, to ensure that young people never start smoking and to increase the number of people who successfully quit smoking – and includes six key focus areas:
- (a) making sure that there is Māori leadership and decision making;
 - (b) increasing health promotion and community action;
 - (c) increasing stopping smoking services;
 - (d) making it easier to quit and harder to become addicted to smoking;
 - (e) making smoked tobacco products harder to buy; and
 - (f) ensuring that the law is followed by industry.⁶³

There is nothing in the Smoke-free 2025 programme that is concerned with gambling and smoking, or with areas in which people are allowed to smoke.

57. The Auckland Council policy targets for the number of EGMs in the city is similarly irrelevant to this application. Auckland Council, as the relevant territorial local authority, has a statutory role in controlling the number of EGMs at class 4 venues in the city through provision for its statutory consent to new class 4 venues or increases in EGMs at current class 4 venues. Casino gambling falls outside the scope of that statutory role.
58. The Commission has previously imposed a licence condition obligation that no gambling activity may be visible from outside the Casino. The gambling inspectorate of the Department of Internal Affairs polices that obligation. Approval by the Commission of an area intended to be used as an open area does not confirm that it necessarily complies with the obligation. A final assessment of external visibility can only be made once the facility is completed, and any approved EGMs are in position.
59. Several parties commented adversely on the decision by SCAL to seek approval only for construction of the new deck with associated amendment to the designation of the casino

⁶³ <https://www.health.govt.nz/strategies-initiatives/programmes-and-initiatives/smokefree-2025/smokefree-aotearoa-2025-action-plan/about-the-smokefree-aotearoa-2025-action-plan#toc-0-1>.

Gambling Areas but not approval of a floor plan showing the number and location of gambling facilities on the deck. SCAL provided some provisional indicative information but made clear that an application for approval of floor plans incorporating the proposed deck will be made only once the deck is completed. That course was open to SCAL. A consequence of doing so is that decisions about the permitted number and location of gambling products on the proposed deck are matters for a separate application and decision in the future. A decision on this application does not mean that SCAL can be assured it will be able to operate the indicated number of EGMs on the smoking deck once construction is completed.

60. A further consequence of the deferral in seeking approval for floor plans is that a decision on this application does not include any authorisation to use the proposed deck for gambling. For that reason, the Commission is of the view that questions of consequent amendment to the casino HRP are best left to a future application for floor plan approval. It is only at that point that it will be clear exactly what gambling (if any) will be permitted on the proposed deck, including what EGMs will be relocated from other parts of the casino. SCAL has made it clear that it does not seek an increase in the total permitted number of EGMs so the construction of the proposed deck and its designation as Gambling Areas will not result in an overall increase in the opportunities for casino gambling. While the proposed deck is expected to increase the facilities for smoking at the casino, that is of no direct relevance to the application of the Act to the application.
61. Although referred to generically, the Commission sees no basis for the Treaty of Waitangi to be a material consideration in deciding the application. Assertions of disproportionate gambling harm effects, even if established, are not relevant to an application for construction and design changes and amendment of the Gambling Area. Similarly, the overall balancing of the economic benefits of authorised gambling against harm concerns, as suggested by HTH, has already been undertaken by Parliament in enacting the Act, including the restrictions on the granting of casino licences and in increasing opportunities for casino gambling, with the result reflected in the Hamilton EGM decision summarised in paragraph 25 above.
62. HTH's recommendations for further reviews and consultation are also not relevant to the process that governs decisions on this application. The application hearing process is a form of review and consultation; it seeks material and established matters for consideration by the Commission. It does not provide a forum to submit suggestions of further study by, and consultation with others. So far as improvements to harm minimisation practice, such as changes to the rules related to breaks in play under the casino's HRP are concerned, they will fall for consideration first when an application for floor plan approval is made and otherwise at the next HRP review, expected to commence in late 2025.

63. When considering the relationship between smoking and problem gambling, the Commission has had initial regard to the submissions received on academic research and to the Delfabbro report, and has reached the following provisional views:
- (a) The most established relationship appears to be that a comparatively high proportion of problem gamblers are also smokers. That comparative does not appear to establish a causative connection.
 - (b) The statistics summarised in paragraph 46 above are long outdated but indicate that declining approval for smoking decks would have a greater adverse effect on non-problem gamblers who smoke and derive enjoyment from combining both lawful activities than a justified beneficial effect on problem gambling.
 - (c) The Commission continues to adopt the approach taken in the Hamilton EGM decision that changes should not be declined simply because they are expected to make gambling more pleasurable and popular. It is concerned only with an increase in gambling harm which is disproportionately greater than the increase which might be expected from the activity being more pleasurable.
 - (d) It remains interested in persuasive evidence about the importance of breaks in play and, if established, in whether breaks in play should be mandated in HRPs or possibly achieved indirectly through limiting smoking facilities. In either case, the observed behaviour of smokers while gambling would likely be relevant.
 - (e) The effectiveness of the Focal Research system deployed at the Casino may be material to future consideration of harm minimisation practice but that materiality is likely to depend on a sound assessment of the system's accuracy and effectiveness in detecting problem gambling.
64. For the reasons set out above, the Commission has decided to grant the application for approval of construction and design changes. The Commission was satisfied that the proposed changes would not adversely impact any of the matters set out in condition 7.
65. As to the redesignation of the Gambling Area, 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 licence conditions defining the new area are consistent with section 139(2) of the Act.⁶⁴

⁶⁴ See, for example, decisions GC25/10 and GC33/10.

66. SCAL's venue licence defines the casino venue as the block bounded by Hobson Street, Wellesley St West, Federal Street and Victoria St West, less specifically excluded areas within the block. The Commission is satisfied that the proposed new gambling area is within the defined casino venue. The Commission considers that the proposed redesignation of the casino's Gambling Areas meets the requirements of section 139(2).
67. The Commission will give further consideration to what, if any, additional steps should be required under the casino's HRP when it considers a future application for approval of new floor plans as there will be no change in gambling activity in the interim and the proposed floor plans will enable the Commission to see the overall effect of what is then proposed. In addition, the question of breaks in play generally, and more specifically for smoking areas, are expected to be considered on the next HRP review for the casino.

Decision

68. The Commission approved:
- (a) SCAL's application for approval of construction and design changes, pursuant to conditions 6 and 7 of SCAL's venue licence; and
 - (b) SCAL's application to redesignate the Gambling Areas at the Auckland casino in the manner proposed, under condition 9 of SCAL's venue licence and section 139 of the Act. The plans depicting the redesignated Gambling Areas for level 3 in Schedules 1 and 2 are **attached**.

Appeal

69. 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.

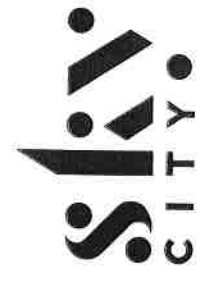


Susan Hughes KC
Gambling Commissioner

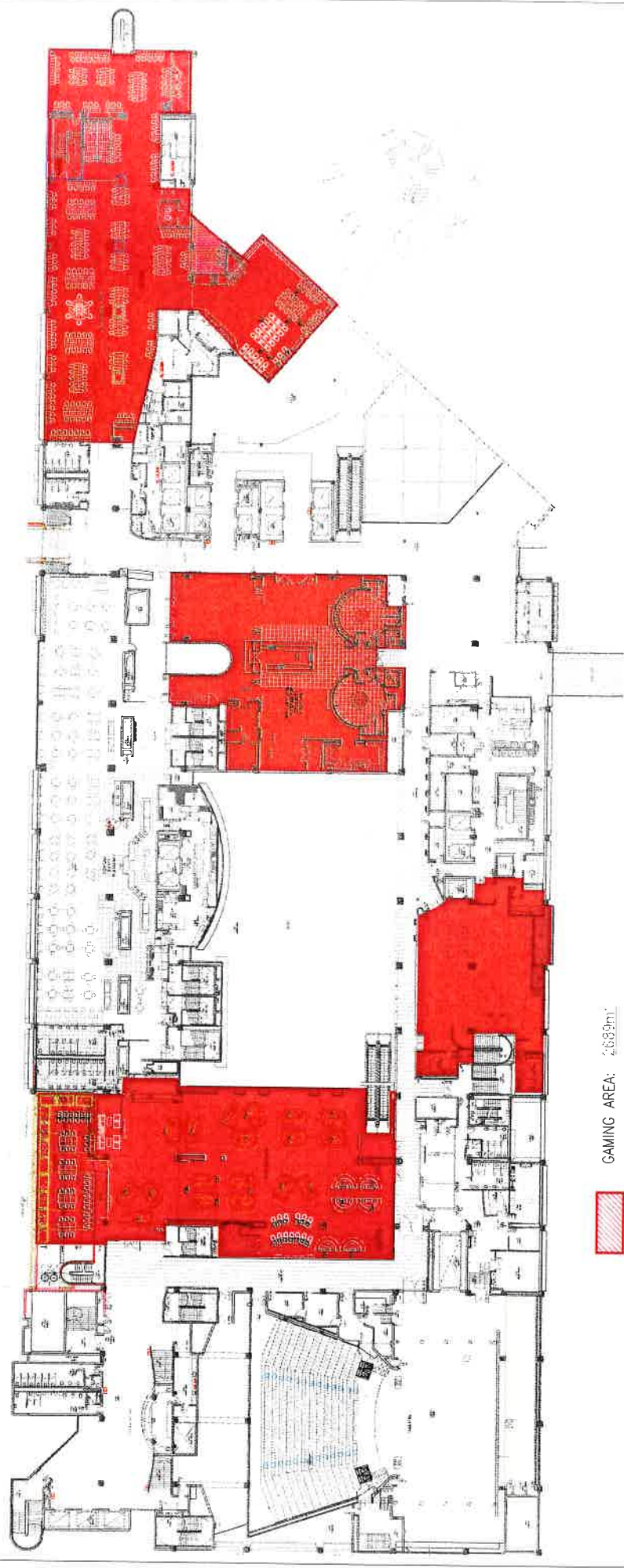
for and on behalf of the
Gambling Commission

5 June 2025



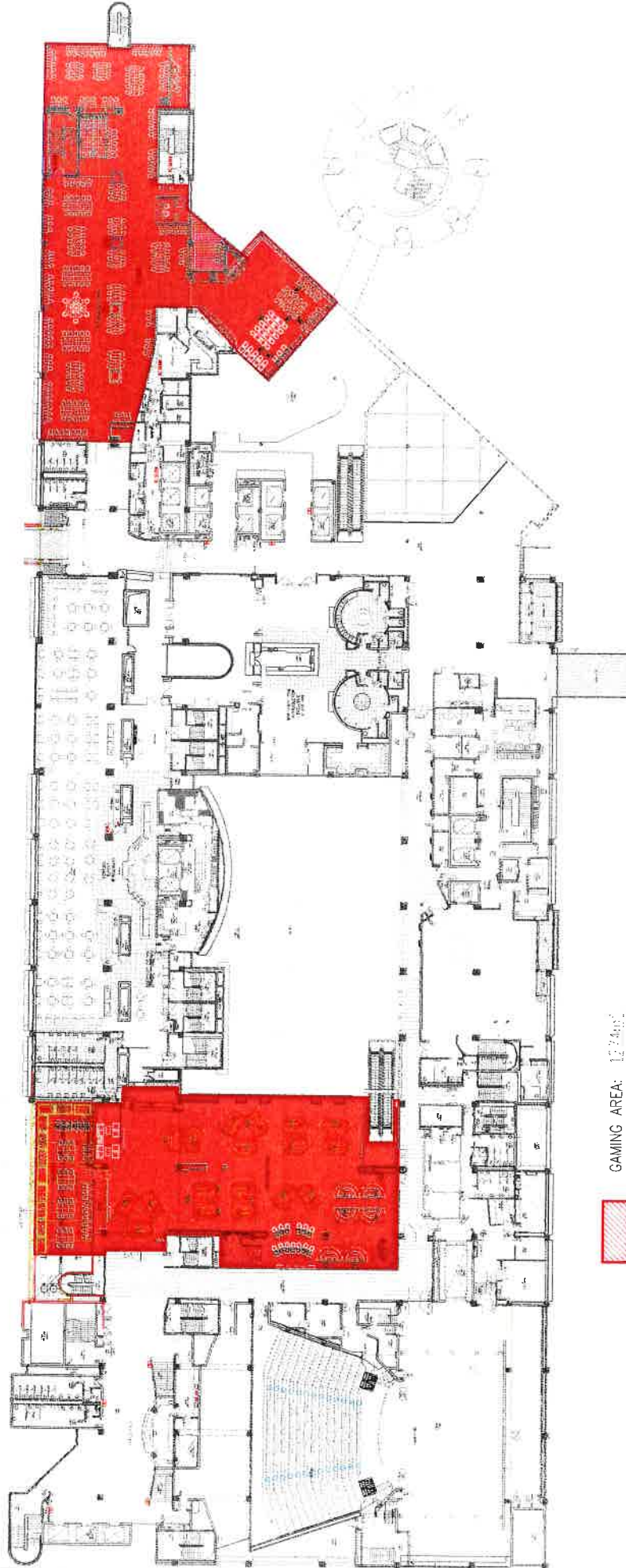



MAIN SITE LEVEL 3



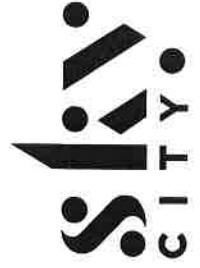
GAMING AREA: 4,689m²

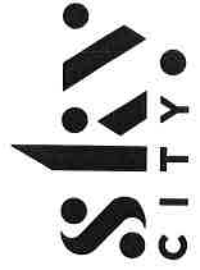




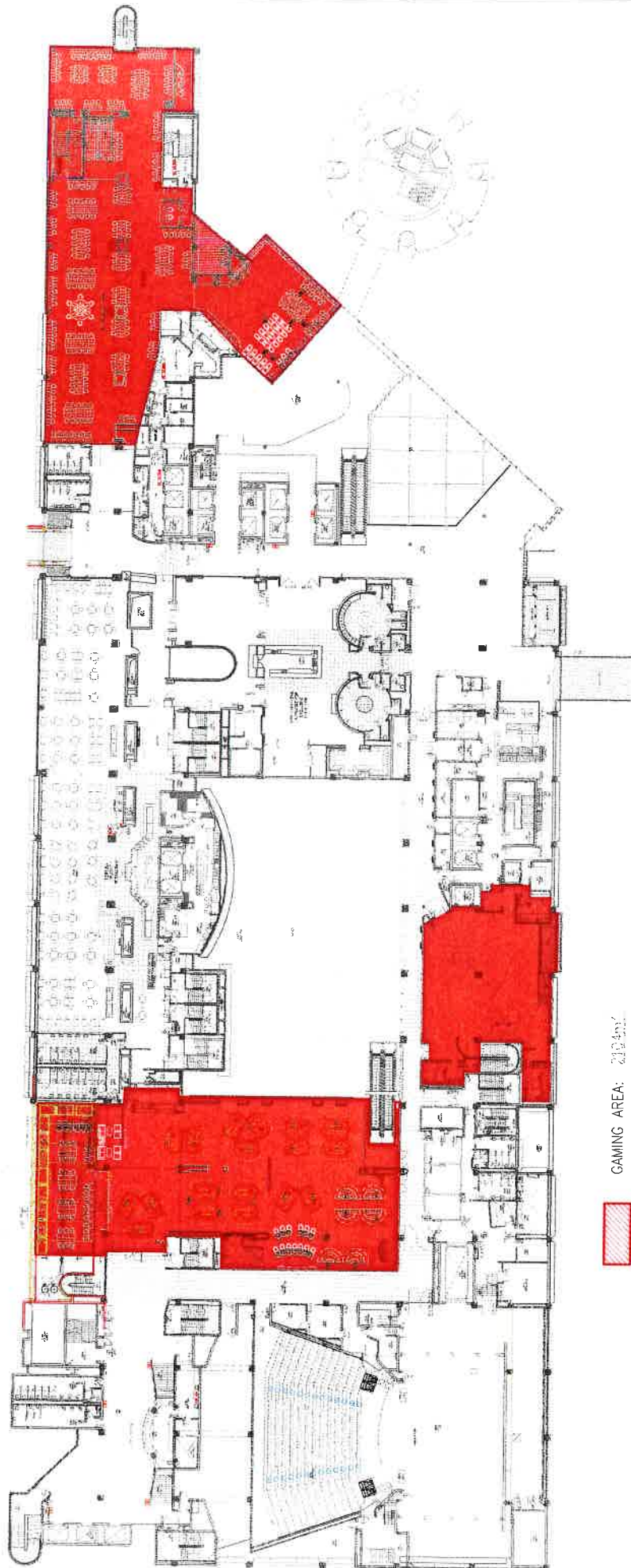

 GAMING AREA: 17,740 sq ft

MAIN SITE LEVEL 3





MAIN SITE LEVEL 3



GAMING AREA: 2100 sqm





GAMING AREA: 2335 SqM

MAIN SITE LEVEL 3

