

**IN THE MATTER** of the Gambling Act 2003

**AND** on an application by **SKYCITY HAMILTON LIMITED** to redesignate the Gambling Area and for approval of construction and design changes

**BEFORE THE GAMBLING COMMISSION**

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

Date of Application: 27 June 2013

Date of Decision: 9 August 2013

Date of Notification  
of Decision: 26<sup>th</sup> August 2013

**DECISION ON AN APPLICATION BY SKYCITY HAMILTON LIMITED  
TO REDESIGNATE THE GAMBLING AREA AND FOR APPROVAL  
OF CONSTRUCTION AND DESIGN CHANGES**

**Introduction**

1. SKYCITY Hamilton Limited ("**SHL**") applied to the Commission:
  - (a) to redesignate the Gambling Area at the Hamilton casino, under condition 9 of SHL's venue licence and section 139 of the Gambling Act 2003 (the "**Act**"); and
  - (b) to vary conditions 9 and 9A of SHL's venue licence, under section 139 of the Act, to incorporate the redesignated Gambling Area; and
  - (c) for approval of construction and design changes, under conditions 6 and 7 of its venue licence.
  
2. The Commission consulted on the application with the Secretary for Internal Affairs ("the **Secretary**"), Problem Gambling Foundation and the Salvation Army. It received submissions from the Secretary only.

**Act and licence conditions**

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



**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).

4. The relevant licence conditions, with the proposed variations to conditions 9 and 9A shown in mark-up, are as follows:

**SHL's venue licence**

6. The Licence Holder must obtain the approval of the Commission prior to:
- (a) construction or design changes to Level 1 of the Casino Venue, including the Gambling Area;
  - (b) the construction or relocation outside the Gambling Area and within the Casino Venue of bank facilities available to the public excluding ATMs, EFTPOS and like devices;
  - (c) the addition or alteration of signage relating to the casino business on the exterior of the Casino Venue or on or around the building within which it is located.

The process by which the Licence Holder may obtain approval for construction or design changes to Level 1 of the Casino Venue (6(a) above) is set out in condition 7. The Commission will determine any application for approval under 6(b). The Executive Director may approve the addition or alteration of signage relating to the casino business on the exterior of the Casino Venue or on or around the building within which it is located (paragraph (c) above) if he/she is satisfied the proposed changes will have no potentially adverse effects. If he/she is not so satisfied, the proposed changes must 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 Level 1 of the Casino Venue. Notification must be accompanied by relevant drawings and an assessment of any impacts the alterations may have on:
- (a) the integrity and fairness of games;
  - (b) the effectiveness of security and surveillance;
  - (c) harm prevention, harm minimisation and responsible gambling;
  - (d) potential access to the Gambling Area by persons under 20 years of age; and

- (e) compliance by any person with the Act, including section 11.

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

9. The standard Gambling Area for the Casino Venue is delineated in the plan attached as Schedule 1 to these conditions. A first alternative Gambling Area is delineated in the plan attached as Schedule 2. A second alternative Gambling Area is delineated in the plan attached as Schedule 3.
- 9A. A change of Gambling Area will take effect subject to the Licence Holder providing the Commission and the Inspectorate a minimum of 10 working days notice in writing of its intention to adopt one of the approved Gambling Areas referred to in condition 9 and shown in Schedules 1, and 2, or 3.

### SHL's submissions

5. SHL submitted, in summary, as follows:
- (a) Pursuant to condition 6 of its venue licence, it must obtain Commission approval prior to construction or design changes to level 1 of the casino venue, including the Gambling Area. The process by which it must obtain approval is set out in condition 7.
- (b) It presently has two Gambling Areas for the Hamilton casino. The standard Gambling Area is delineated in Schedule 1, while an alternative Gambling Area is delineated in Schedule 2.
- (c) It wants to introduce a further alternative gambling area, which will enable it to use level B1 for gaming as well as entertainment (live bands, other shows, bingo, karaoke and quiz nights). Level B1 forms part of the casino venue and comprises 768m<sup>2</sup> of floor space. It is currently occupied by Function Rooms. The Function Rooms were not part of its original licence application so their conversion has no relevance to the original licensing decision.
- (d) The designation of the new area as gambling area will necessitate design changes to levels 1 and B1 as follows:
- (i) the installation of new stairs and a lift joining the MGF on level 1 to B1;
- (ii) the installation of fire egress doors (as directed by the relevant authorities) on level B1, which may only be opened from the inside;

- (iii) access to the promenade area directly outside level B1 (which will be walled off) to accommodate patrons who wish to leave the building to smoke;
  - (iv) a small extension to one of the outer walls on level B1, to accommodate a double airlock and crash door egress;
  - (v) a general refurbishment to make the area suitable for entertainment and gaming.
- (e) The proposal has no impact on any of the matters set out in condition 7. Public access to the area would be restricted to the stairs and lift on the MGF. The proposed new designated gambling area will be appropriately fitted out with CCTV to ensure that it satisfies the requirements of the Surveillance Standard.
- (f) Attached to its application is a plan showing the casino venue boundaries and the area it is proposing to designate as gambling area. This plan also shows the small extension it wants to add. Part of this extension falls within the casino boundary, while part falls outside. In terms of design around fire egress, its preference is to build the extension, but if the Commission considers that this is problematic, then it will leave the design in this area as it currently is.
- (g) The promenade area, which for the most part is outside the casino venue, will have an outer wall or fence constructed so that there is no access to the designated gambling area from outside level B1. The area in question is shown on the plan, although the length of the walled area and its exact location has not been finalised.
- (h) Floor plans for the placement of gambling product in the new area will be submitted for approval in the future, but at this stage it intends to install approximately 5 gaming tables and 35 gaming machines. This product will be relocated from elsewhere in the casino.

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

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

- (a) The proposed new gambling area on level B1 falls within the casino premises as defined by the casino premises licence. However, the proposed extension of an outside wall partly falls outside of the casino boundary.



- (b) Any extension made to the casino must meet the requirements of the premises licence. Following the Commission's previous decisions, such as GC05/09, if the proposed extension falls outside of the casino premises as identified in the casino premises licence, the application should not be approved.
- (c) He has no significant concerns in relation to the effectiveness of security and surveillance in the proposed new gambling area, although he would want to see a more detailed floor plan showing the location of CCTV cameras to ensure that they are put in place to prevent unauthorised access of minors and excluded persons. He notes that SHL intends to submit a new floor plan at a later date.
- (d) There would be no significant impact on harm minimisation and no new gambling opportunities. However, SHL states that the proposed new gambling area will also be used for general entertainment. Sufficient entertainment alternatives to gambling must still be available when the proposed new area is used for gambling.
- (e) SHL's proposed changes include walling off access to the promenade area directly outside level B1 to accommodate patrons who wish to leave the building to smoke. SHL states that the length of this walled area and its exact location has not been finalised. Further information, including final plans, of this aspect of the proposal are required before a proper determination can be made as to whether this area equates to an extension of the casino venue boundary.

#### **SHL's submissions in reply**

7. SHL submitted in reply as follows:

- (a) The Secretary's view is that to the extent that the proposed extension falls outside of the casino premises, then the application should not be approved. The area outside the casino premises amounts to approximately three square metres and while that may technically amount to an extension to the casino venue, it invites the Commission to consider the legal doctrine of *de minimis*.
- (b) Its design preference is to proceed with the extension in the manner proposed, but the project is not dependent on this design. If the Commission considers the proposed extension to be problematic, then it will proceed with an adjusted design which sits inside the casino boundary. Accordingly if the Commission is not minded to approve that part of the application which provides for the extension sought, it asks that this aspect be isolated, with the other parts of the application being considered separately.



- (c) It will continue to ensure that an appropriate balance between the gaming and non-gaming facilities is provided throughout the complex.
  - (d) A final issue relates to the construction of the wall or fence outside the casino venue. The outer wall would be designed to prevent persons outside the walled area from gaining access to the venue. It is not an extension to the casino venue, but rather a barrier to prevent persons accessing the venue.
  - (e) It previously indicated that the length of the walled area and its exact location had not been finalised. Since then, it has firmed up its thinking on the location, which is reflected in the plan attached to its submissions in reply. A set of double doors would be installed to provide access to the area in question.
  - (f) If the Commission has any concerns with its proposal to provide an area outside the casino venue in which customers may smoke, it asks that this issue be determined separately from the other parts of the application.
8. Subsequent to its submissions in reply, SHL asked to withdraw the fencing proposal from the Commission's consideration, and advised that it would make fencing the subject of a separate application for approval.

#### **Analysis**

9. SHL sought approval of a number of changes to the Hamilton casino, all of which stemmed from its desire to expand the casino's Gambling Area.

#### *Redesignation of the Gambling Area*

10. SHL's primary application was to redesignate the Gambling Area to include level B1, which is beneath the MGF. In previous decisions, the Commission has considered whether it has 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 amended area are consistent with section 139(2) of the Act.
11. SHL's venue licence defines the casino venue as "that part of the property situated at 246 Victoria Street, Hamilton, as more fully described in the First and Second Schedules to this Licence." The First Schedule sets out the legal description for the premises, while the Second Schedule sets out plans for the premises with the casino's boundaries being clearly delineated in bold. The Commission was satisfied that the proposed new gambling area is within the defined casino venue.



12. The Commission was also satisfied that the proposed licence conditions are consistent with section 139(2) of the Act. Specifically the Commission was satisfied that the expansion of the Gambling Area does not, of itself, increase opportunities for casino gambling because the expansion does not permit SHL to place gambling products in the extended gambling area; in order to place gaming tables or gaming machines in the extended area, SHL will require a new floor plan for the Hamilton casino. SHL advised that it intends to present an application for approval of a new floor plan in the future. The Commission will consider whether the relocation of gaming tables or gaming machines potentially increases opportunities for casino gambling when it considers that application. It will also address the balance between gaming and non-gaming facilities at that stage.

*Extension*

13. SHL proposed an extension to one of the outer walls on level B1. Part of the extension falls within the casino venue, while part does not. The Commission has previously considered whether it has jurisdiction to extend a casino's venue, determining that it has no power to expand a casino beyond the premises as defined in the licence. In decision GC05/09 (an application by Dunedin casino to construct a restaurant and bar facility attached to the casino) the Commission noted as follows:
16. The Commission first considered whether it has the power to amend a casino venue licence to alter the premises as defined in that licence. DCL's venue licence, as issued by the CCA, identifies the name and address of the licence holder, sets out the term of the licence, identifies the physical premises of the casino and states that the licence is subject to conditions. The physical location of the casino is described in the licence itself (rather than in the conditions) and is identified in plans in the first schedule to the licence.
17. Whether or not a statutory body such as the Commission has the power to amend a licence, the conditions to the licence, or both, depends on the terms of the empowering enactment. In the present case, the Gambling Act 2003 confers on the Commission, at section 139, the power to specify, vary or revoke licence conditions in the casino venue and casino operator's licences. There is no express power in the Act for the Commission to amend the licences themselves. In the absence of an express power to vary licences, no such power can be implied.
18. The Commission may have the ability to amend minor details on the licence, but the physical location of the casino is a fundamental matter going to the grant of the licence, which the Commission has no power to amend.
19. This view is supported by the existence of express powers in the Act to transfer licences by way of mortgage, charge, or other encumbrance, and the express prohibition on otherwise transferring casino licences (see sections 126 and 127 of the Act). The explicit setting out of such powers in the Act suggests that the omission to set out powers to amend casino licences was deliberate.
20. As the casino must be exclusively within the area specified in the casino venue licence, the Commission considers that the casino premises cannot be relocated from, or expanded beyond, the premises defined in the licence. None of the submitters advanced a different view, although DCL reserved its right to do so before the Courts if necessary.

14. Consistent with this analysis (which the Commission has also applied to the Auckland casino), the Commission considers that it cannot extend the casino venue beyond that granted by the CCA when it issued the Hamilton licence.
15. In its submissions in reply, SHL asked the Commission to consider applying the principle of *de minimis*; namely that the Commission could approve the proposed extension on the basis that it is so small to be of no real consequence. The Commission is not prepared to apply the *de minimis* principle to approve the application. Such an application might be appropriate if the extension to such a key control as the casino boundary were truly very minor, in the order of a few centimetres. The Commission does not consider the doctrine as appropriate for application to allow extensions measured in metres.
16. SHL submitted that it could proceed with construction and design changes relating to the fire egress doors in a manner that did not extend the casino beyond the defined boundaries of the casino venue licence. In light of the Commission's decision, it will need to do so. The nature of the required modification is sufficiently obvious that the Commission does not need to approve a modified plan (it will simply require SHL to "pull" its proposal from outside the casino boundary, to within the boundary).

*Construction and design changes*

17. The Secretary raised an issue in relation to the construction of a fence outside the casino venue, submitting that this aspect of the application should not be considered until further details are known. Subsequent to filing its submissions in reply (which provided further detail), SHL withdrew this aspect of the application, stating that it would submit a new application to fence off the promenade area once it had additional information to offer to the Commission. As a result the Commission did not need to consider the potentially contentious issue of whether the erection of such a fence would result in an extension of the casino venue.
18. However, an effect of the withdrawal of the proposed fence is to remove the secure perimeter from the promenade area, immediately alongside the newly extended level B1 gambling area. Without the originally proposed security fence, public access to the new gambling area would not be restricted to the stairs and lift from the MGF, as the application describes, but would also be available directly from outside the casino venue. The fact that SHL originally proposed to fence off the area alongside the new level B1 gambling area confirms its own doubts about the desirability of such unrestricted access. Public access at that point would appear to raise difficulties about controlling access by persons under 20 years and possibly undermine licensing controls on access to cash at the casino. The Commission's approval of the proposed construction and design

changes will therefore also require a further change to remove all access to the level B1 gambling area from the promenade area.

19. The Commission considered the remainder of SHL's proposed construction and design changes against the matters specified in licence condition 7, which provides as follows:

7. The Licence Holder must notify the Executive Director of any proposed changes to the construction or design of Level 1 of the Casino Venue. Notification must be accompanied by relevant drawings and an assessment of any impacts the alterations may have on:

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

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

20. None of the remaining proposed changes raise any issues of regulatory concern for the Commission. As noted, SHL will need to ensure that there is no access to the new Gambling Area from outside level B1 as the proposed promenade fence/wall will now not be constructed concurrently with the other changes. SHL will also need to ensure that no gambling activity is visible from outside the venue, including the promenade area, as required by condition 8 of its venue licence.

#### *Consequential amendments*

21. As SHL has now obtained Commission approval to extend the gambling area to a new level, consequential licence condition amendments are required. SHL did not seek approval to amend these licence conditions, but the Commission has done so on its own initiative, under section 139(1)(e) of the Act, to reflect the additional area in respect of which construction and design changes must be notified to the Commission. Accordingly, the Commission amended the following conditions, with the amendments shown in mark-up.

5. The Licence Holder shall lodge and maintain with the Commission and the Secretary updated as built architectural floor plans of Levels B1 and 1 of the Casino Venue showing walls, structures and dimensions. Updated as built architectural floor plans shall be lodged with the Commission and the Secretary if the Licence Holder makes alterations to Levels B1 and 1 of the Casino Venue requiring building consent from a territorial authority.

6. The Licence Holder must obtain the approval of the Commission prior to:
- (a) construction or design changes to Levels B1 and 1 of the Casino Venue, including the Gambling Area;
  - (b) the construction or relocation outside the Gambling Area and within the Casino Venue of bank facilities available to the public excluding ATMs, EFTPOS and like devices;
  - (c) the addition or alteration of signage relating to the casino business on the exterior of the Casino Venue or on or around the building within which it is located.

The process by which the Licence Holder may obtain approval for construction or design changes to Levels B1 and 1 of the Casino Venue (6(a) above) is set out in condition 7. The Commission will determine any application for approval under 6(b). The Executive Director may approve the addition or alteration of signage relating to the casino business on the exterior of the Casino Venue or on or around the building within which it is located (paragraph (c) above) if he/she is satisfied the proposed changes will have no potentially adverse effects. If he/she is not so satisfied, the proposed changes must 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 B1 and 1 of the Casino Venue. Notification must be accompanied by relevant drawings and an assessment of any impacts the alterations may have on:
- (f) the integrity and fairness of games;
  - (g) the effectiveness of security and surveillance;
  - (h) harm prevention, harm minimisation and responsible gambling;
  - (i) potential access to the Gambling Area by persons under 20 years of age; and
  - (j) compliance by any person with the Act, including section 11.

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

## Decision

22. The Commission approved:

- (a) the redesignation of the Gambling Area in the manner proposed, under condition 9 of SHL's venue licence and section 139 of the Act;
- (b) variations to conditions 9 and 9A of SHL's venue licence, under section 139 of the Act. Conditions 9 and 9A now read as follows:

9. The standard Gambling Area for the Casino Venue is delineated in the plan attached as Schedule 1 to these conditions. A first alternative Gambling Area is delineated in the plan attached as Schedule 2. A second alternative Gambling Area is delineated in the plan attached as Schedule 3.

- 9A. A change of Gambling Area will take effect subject to the Licence Holder providing the Commission and the Inspectorate a minimum of 10 working days notice in writing of its intention to adopt one of the approved Gambling Areas referred to in condition 9 and shown in Schedules 1, 2, or 3.
- (c) the proposed construction and design changes, under conditions 6 and 7 of SHL's venue licence (excluding the proposed extension to the casino venue, the proposed promenade fencing and access to level B1 from the promenade area);
- (d) variations to conditions 5, 6 and 7. Conditions 5, 6 and 7 now read as follows:

5. The Licence Holder shall lodge and maintain with the Commission and the Secretary updated as built architectural floor plans of Levels B1 and 1 of the Casino Venue showing walls, structures and dimensions. Updated as built architectural floor plans shall be lodged with the Commission and the Secretary if the Licence Holder makes alterations to Levels B1 and 1 of the Casino Venue requiring building consent from a territorial authority.
6. The Licence Holder must obtain the approval of the Commission prior to:
- (a) construction or design changes to Levels B1 and 1 of the Casino Venue, including the Gambling Area;
  - (b) the construction or relocation outside the Gambling Area and within the Casino Venue of bank facilities available to the public excluding ATMs, EFTPOS and like devices;
  - (c) the addition or alteration of signage relating to the casino business on the exterior of the Casino Venue or on or around the building within which it is located.

The process by which the Licence Holder may obtain approval for construction or design changes to Levels B1 and 1 and of the Casino Venue (6(a) above) is set out in condition 7. The Commission will determine any application for approval under 6(b). The Executive Director may approve the addition or alteration of signage relating to the casino business on the exterior of the Casino Venue or on or around the building within which it is located (paragraph (c) above) if he/she is satisfied the proposed changes will have no potentially adverse effects. If he/she is not so satisfied, the proposed changes must 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 B1 and 1 and of the Casino Venue. Notification must be accompanied by relevant drawings and an assessment of any impacts the alterations may have on:
- (a) the integrity and fairness of games;
  - (b) the effectiveness of security and surveillance;
  - (c) harm prevention, harm minimisation and responsible gambling;
  - (d) potential access to the Gambling Area by persons under 20 years of age; and

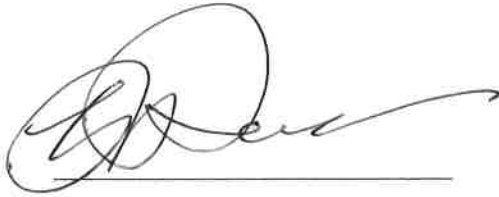
- (e) compliance by any person with the Act, including section 11.

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

23. Schedules 1, 2 and 3 are **attached**.

**Right of appeal**

24. Pursuant to section 235 of the Act, a person affected by this decision may appeal that decision to the High Court. An appeal must be made within 15 working days of the date of notice of the Commission's decision, or any longer period that the High Court may allow.



Graeme Reeves  
Chief Gambling Commissioner

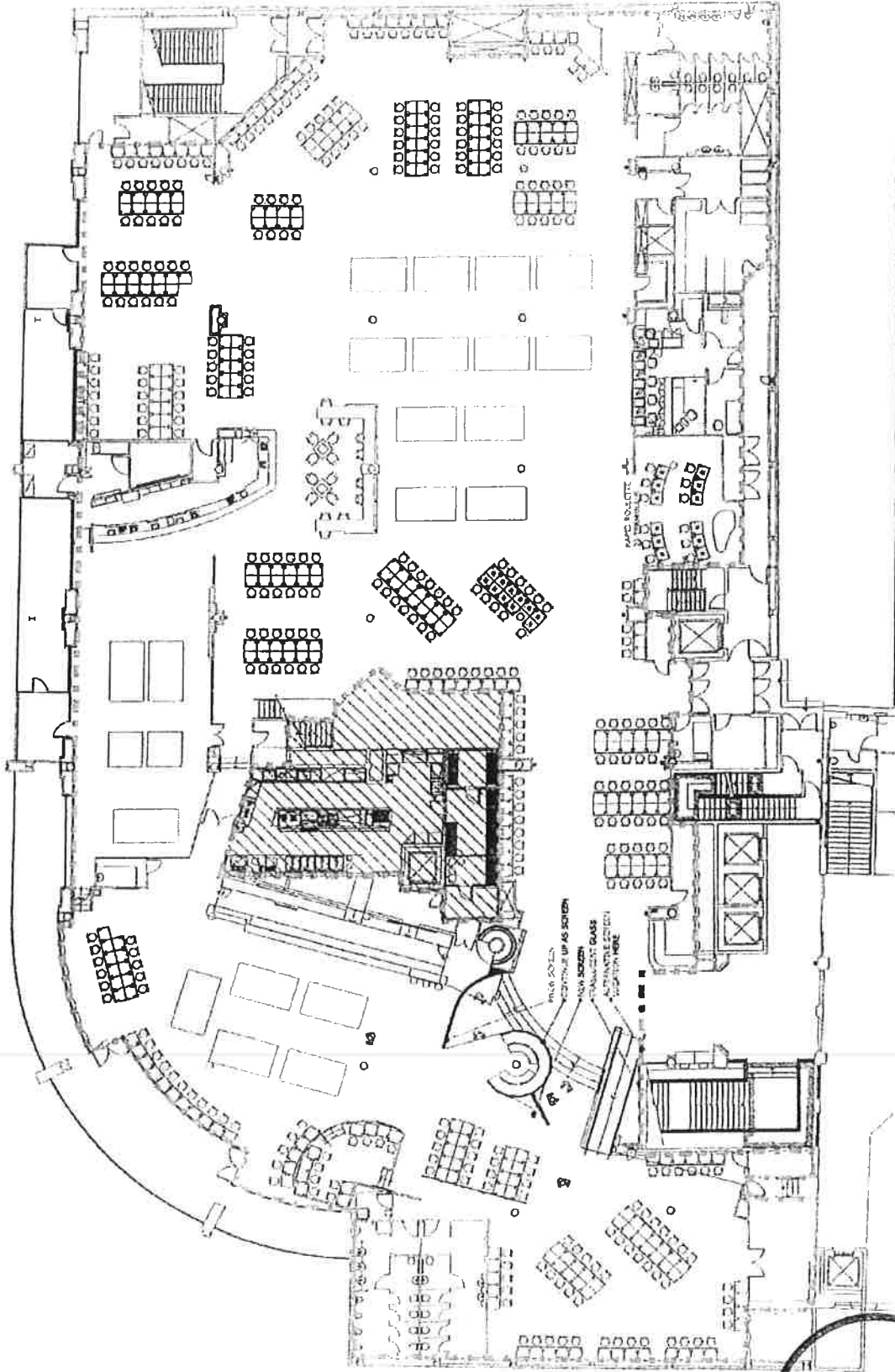
for and on behalf of the  
Gambling Commission

*g/r* August 2013





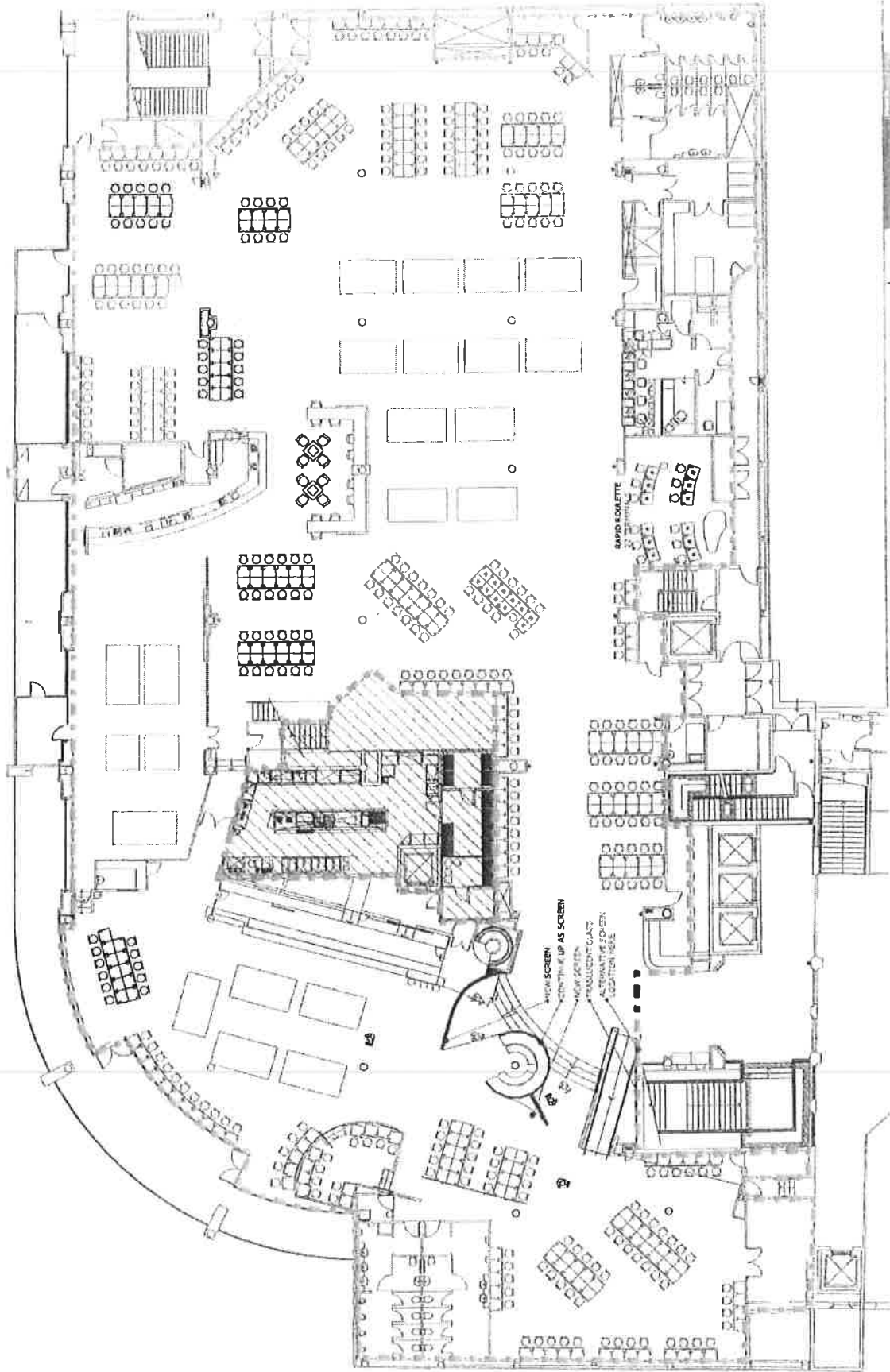
# Schedule 2



02  
seata ARCHITECT  
SKYCITY  
Floor Layout  
Reading Zones



# Schedule 3



02

**skate** ARCHITECTS

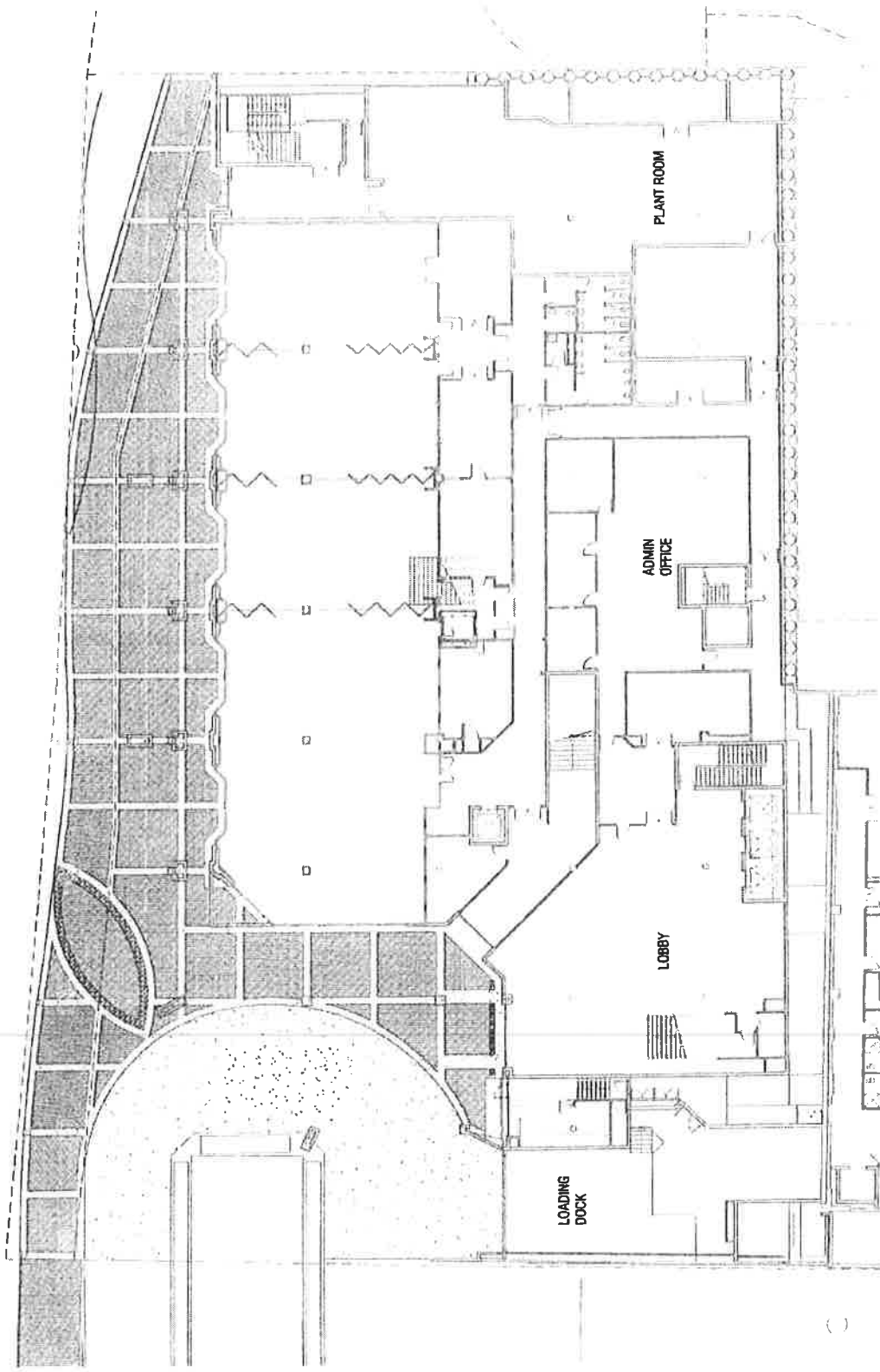
**SKYCITY** HAMILTON

Sky City Casino  
Kawartha Centre, Phase 16, 1st

Restline Zones



# Schedule 3



Scale 1:100

PROPOSED LOWER GROUND FLOOR - "RED LINE" AREA OPTION 4

SKYCITY HAMILTON  
100 HIGH STREET  
HAMILTON



Proposed Lower Ground Floor - "Red Line" Area Option 4  
Architect: Buchanan  
Scale: 1:100  
Date: 10/10/2011

