

IN THE MATTER of the Gambling Act 2003
AND on an application by **SKYCITY CASINO MANAGEMENT LIMITED** and **SKYCITY HAMILTON LIMITED** for approval of construction and design changes, and a new floor plan for the Hamilton casino

BEFORE THE GAMBLING COMMISSION

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

Date of Application: 21 October 2013

Date of Decision: 6 December 2013

Date of Notification
of Decision: 19th December 2013

**APPLICATION BY SKYCITY CASINO MANAGEMENT LIMITED
AND SKYCITY HAMILTON LIMITED FOR APPROVAL OF CONSTRUCTION AND DESIGN
CHANGES, AND A NEW FLOOR PLAN FOR THE HAMILTON CASINO**

Introduction

1. SKYCITY Casino Management Limited (“**SCML**”) and SKYCITY Hamilton Limited (“**SHL**”) (together the “**Applicants**”) have applied to the Commission for approval of:
 - (a) construction and design changes to the Hamilton casino, under conditions 6 and 7 of SHL’s venue licence; and
 - (b) a new floor plan, “May 2014”, under conditions 11 and 12 of SCML’s operator’s licence for the Hamilton casino.
2. The Commission consulted on the application with the Secretary for Internal Affairs (the “**Secretary**”) and the Problem Gambling Foundation (“**PGF**”). It received submissions from both.

Licence conditions

3. The relevant licence conditions 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 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:
- (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.

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



SCML operator's licence (Hamilton)

11. The Licence Holder shall operate in accordance with approved floor layouts showing the position of gaming tables and gaming machines.
12. The Licence Holder shall obtain the approval of the Commission for new floor plans prior to relocating or installing tables or machines in positions not specified in approved floor layouts. When applying, the Licence Holder must submit fresh plans showing the floor layout for the Gambling Area and details of the proposed CCTV layout for the consideration of the Commission. Any changes must comply with the Surveillance Standard. The Executive Director and a single Gambling Commissioner may approve the new floor plans if they are satisfied that the floor layout has no potentially adverse effects. If they are not so satisfied, the proposed floor plan must be referred to the Commission for a decision on approval.

Submissions by the Applicants

4. The Applicants stated that:

Design changes

- (a) In decision GC23/13 the Commission approved construction and design changes to allow them to develop a new gambling area on the lower ground floor of the Hamilton casino. They now want to revise that design:
 - (i) To remove all existing external doors on the lower ground floor (to prevent access to the area from the outdoor promenade).
 - (ii) To situate an entertainment area with a stage at the southern end of the lower ground floor.
 - (iii) To provide food and beverages from a purpose built bar and food service area.
 - (iv) To relocate the TAB station (currently in the Vue Bar) to the lower ground floor.
 - (v) To wall off the area on the lower ground floor in which they want to house gaming machines, from the other entertainment areas. Access will be via doors to the left of the new stairs.
- (b) A more significant design change involves a proposal to install louvres on part of the external walls on the lower ground floor. The louvres will be angled to ensure that pedestrians on the promenade are unable to see into the gambling area. Plants will be placed inside the louvred walls as a further visual barrier from outside the building. The installation of louvred walls in the manner proposed will create an open area, meaning those customers using the machines to be located



in this area will be able to smoke while gambling. The design will comply with the Ministry of Health's guidelines (and any subsequent changes to those guidelines).

- (c) The design changes will have no adverse impacts on the matters set out in condition 7 of SHL's venue licence. Issues relating to outdoor gambling areas have been thoroughly canvassed in previous Commission decisions.
- (d) If approved, they want to commence work on the changes in early 2014, with an expected completion date of May 2014.

Floor plan

- (e) The use of the lower ground floor as a gambling area will see 36 machines relocated to this area. At this stage they do not propose to place gaming tables in this area.
- (f) All changes to the floor layout will comply with the Surveillance Standard.

PGF's submissions

5. PGF strongly opposed the application, especially the proposal to create an opportunity for customers to smoke while gambling. It opposes this for the following reasons:
 - (a) The proposal would involve the installation of louvres in a manner that is virtually identical to the use of louvres in the Diamond Room at the Auckland casino. Classifying the proposed gambling area as being outdoors is clearly contrary to the purposes and relevant sections of the Smoke-free Environments Act.
 - (b) The Diamond Room arrangement was recently subject to a Judicial Review by the High Court. The Court determined that the type of arrangement with louvres in the Diamond Room was in breach of the requirements of the Smoke-free Environments Act and that the area would need to be subject to a major reconfiguration if it were to comply with the Act.
 - (c) The ruling was principles-based by determining that the Ministry of Health's calculator (which had been used for the Diamond Room to claim that it was an "open area") conflicted with the intention of the Smoke-free Environments Act. The Court envisaged a wider application of its ruling which would clearly rule out the type of louvre arrangement proposed for the Hamilton casino.
 - (d) In these circumstances, it would be inappropriate, and probably against the Smoke-free Environments Act, to approve the proposal which would allow customers to smoke while gambling at the Hamilton casino.



- (e) Further, the proposed change to allow patrons to smoke while gambling, particularly in a walled off area, is also contrary to the provisions of the Gambling Act because it will increase gambling-related harm in that smokers will be less likely to take a break from gambling, particularly in order to have a smoke. Taking a break to have a smoke gives gamblers a clear opportunity to reassess whether they have already gambled for long enough or have lost as much as they are prepared to lose.
- (f) The application is non-compliant and should be declined.

The Secretary's submissions

6. The Secretary submitted as follows:

- (a) The question of outdoor gambling areas where patrons can smoke and gamble is well settled in the Gambling Act context. In addition, on the basis of the submitted designs and the currently designated Gambling Area on the lower ground floor, issues of access and security appear to be easily managed and an improvement on the prior design. He has not identified any other concerns with the proposal in relation to condition 7 of SHL's venue licence.
- (b) The proposed CCTV layout is not readily apparent from the floor plan submitted for the lower ground floor. However the Applicants have stated that the floor layout will comply with the Surveillance Standard, and he is confident that this can be achieved.

Applicants' submissions in reply

7. In reply to PGF's submissions, the Applicants submitted, in summary, as follows:

- (a) Section 13A of the Smoke-free Environments Act 1990 recognises that people may smoke in any part of the casino that is an open area. In this sense, creating an area where people may smoke and gamble is not contrary to the purposes of the legislation.
- (b) Contrary to the PGF's submissions, the Judicial Review did not find that the Diamond Room was in breach of the Smoke-free Environments Act, or that the area would need to be subject to a major reconfiguration if it were to comply. Rather, the Court determined that the Ministry of Health's calculator was inconsistent with the statutory definition of an open area under the Act and, that being the case, the Ministry should give further consideration to the earlier

complaint that the Diamond Room was not in fact an open area. The Ministry has yet to advise them of the outcome of that further assessment.

- (c) If the Commission sees fit to approve the design changes sought for the Hamilton casino, that approval would have no bearing on the discharge of their obligations under the Smoke-free Environments Act. They have applied to the Commission for design changes to the Hamilton casino in an effort to create an open area, based on their current understanding of the law as it has been applied to date. In the event that there are changes to the way in which that law is applied and it is subsequently determined that the area they are proposing to develop does not satisfy the criteria for being an open area, then they would simply not permit patrons to smoke in that area.
- (d) Finally, the submission that allowing casino patrons to smoke while gambling will increase gambling-related harm has been thoroughly canvassed in previous applications to the Commission. PGF has not introduced any evidence to support its claim which might cause the Commission to reconsider its earlier position on applications of this kind.

8. The Applicants had no submissions in reply to the Secretary's submissions.

Analysis

- 9. In an application leading to decision GC23/13, SKYCITY sought Commission approval for a number of changes to the Hamilton casino in order to create a new gambling area on the lower ground floor. The Commission approved the new gambling area, but did not approve every aspect SKYCITY initially proposed, including a proposed extension to the casino venue.
- 10. As part of that application, SKYCITY also sought Commission approval to construct a security fence outside the new gambling area. SKYCITY sought the fence to allow its patrons to exit the casino to smoke, and to prevent non-casino patrons from entering the casino through the lower ground floor. Following the Secretary's submission that the construction of the fence might represent an extension to the casino premises, SKYCITY withdrew this part of the application.
- 11. Following decision GC23/13 (and, most likely, the Secretary's abovementioned submission), SKYCITY amended its plans for the lower ground floor, stating that it wants to make a number of construction and design changes, including closing all external entrances and converting the floor into an open area where patrons can both smoke and



gamble. SKYCITY stated that it will install louvres on the outer walls, similar to those installed in the Diamond Room at the Auckland casino.

12. The Commission has previously considered applications to construct areas where patrons can both smoke and gamble (see decisions GC15/11, GC18/11, GC05/13 and GC29/13). In those decisions, the Commission held that there is no legal impediment to casino operators offering a facility in which patrons can both smoke and gamble provided that the smoking takes place in an open area as defined by the Smoke-free Environments Act (a matter which is the responsibility of the public health authorities) and the gambling activity is in accordance with the Gambling Act and relevant licence conditions.
13. Accordingly the Commission's consideration of this matter falls to be decided by the same criteria as any other application for construction and design changes. That is, the Commission must look at what is proposed and be satisfied that:
 - (a) the construction and design changes satisfy the requirements of condition 7 of SHL's venue licence;
 - (b) the proposal is consistent with the Act and its purpose.
14. The Applicants are proposing construction and design changes to the lower ground floor of the Hamilton casino. These changes must be assessed against the matters specified in condition 7 of SHL's venue licence, which is as follows:
 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:
 - (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.
15. The Commission was satisfied that the proposed changes would not adversely impact upon any of these matters, including condition 7(c) or condition 7(e). The latter issue is addressed further below.

16. The purpose of the Act is set out in section 3, as follows:

3 Purpose

The purpose of this Act is to—

- (a) control the growth of gambling; and
- (b) prevent and minimise the harm caused by 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
- (g) ensure that money from gambling benefits the community; and
- (h) facilitate community involvement in decisions about the provision of gambling.

17. The Commission was satisfied that the proposal is not inconsistent with the purpose of the Act.

18. PGF opposed the conversion of the lower ground floor into an area where patrons can both smoke and gamble, submitting that a recent High Court judicial review decision indicates that the application should be declined.

19. Having reviewed the decision in question, the Commission considers that PGF has overstated the nature and effect of the decision and that it does not justify declining the Applicants' proposal. In the decision, the Court:

- (a) found that the open area calculator used by the Ministry of Health and its delegates is inconsistent with the statutory definition of "open area";
- (b) quashed an earlier decision by public health officials who had used the calculator to determine that the Diamond Room was an open area; and
- (c) ordered the Ministry and its delegatee to reconsider an earlier complaint that the Diamond Room is not an open area in accordance with the provisions of the Act.

20. As the High Court ordered reconsideration of the complaint (without use of the calculator), it is clear that the decision did not reach any final conclusion on whether the Diamond Room was an open area or an internal area. Consistent with the reconsideration, it also made no comment suggesting that the type of louvre arrangement used in the Diamond Room is in breach of the Smoke-free Environments Act.

21. More importantly, however, the High Court's decision is concerned solely with the application of the Smoke-free Environments Act, not the Gambling Act. The Commission is concerned only with the latter in a context that is limited to whether the proposed construction and design changes are acceptable for the purposes of the Gambling Act. A decision whether the lower ground floor is an "open area" in terms of the Smoke-free

Environments Act is one for the Ministry of Health and its delegates. Use of areas in which there have been construction and design changes authorised by the Commission remains subject to compliance with the Smoke-free Environments Act and to assessments made by the public health authorities under that Act.

22. PGF also submitted that the proposal is contrary to the Gambling Act as it will increase gambling-related harm because gamblers who smoke will be less likely to take breaks from gambling, particularly in order to have a smoke. The Commission has considered and rejected this contention in previous decisions, commencing with decision GC03/07; an appeal by the Lion Foundation in relation to the Kilbirnie Tavern. There is nothing now before the Commission that persuades it to take a different view. The casino operation is already subject to detailed Host Responsibility requirements imposed by the Commission and aimed at the facilitation of responsible gambling and the minimisation of harm. Banning patrons from smoking while gambling is not consistent with those requirements.
23. The other construction and design changes proposed by SKYCITY (entertainment area, food and beverage areas, etc) raise no issues in relation to licence condition 7.

Floor plan

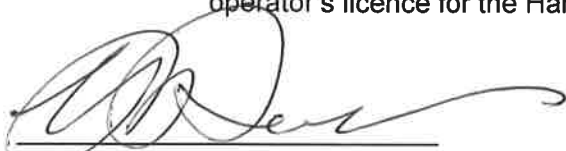
24. In decision GC23/13, the Commission noted that SKYCITY's proposal to expand the Gambling Area at the Hamilton casino would not increase opportunities for casino gambling, and that the Commission would further consider the issue of opportunities when SKYCITY sought approval of a floor plan that provided for the placement of gambling product into the new area.
25. SKYCITY wants to relocate 36 gaming machines from the Main Gaming Floor to the lower ground floor, with a number of consequential relocations to other gaming machines and to gaming tables. The Commission was satisfied that none of the proposed relocations would increase opportunities for casino gambling. In reaching this decision, the Commission was mindful of observations that it has made in previous decisions (see Commission decisions GC01/13 and GC33/10) that reducing congestion in the designated Gambling Area may increase player spaces at gaming tables which are not subject to rules limiting the maximum number of players. The Commission was satisfied that the proposed floor plan would not have this effect and that opportunities for casino gambling would not be increased.



Decision

26. The Commission decided to:

- (a) approve the proposed construction and design changes, under conditions 6 and 7 of SHL's venue licence; and
- (b) approve floor plan "May 2014" (**attached**), under conditions 11 and 12 of SCML's operator's licence for the Hamilton casino.



Graeme Reeves
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

19th December 2013

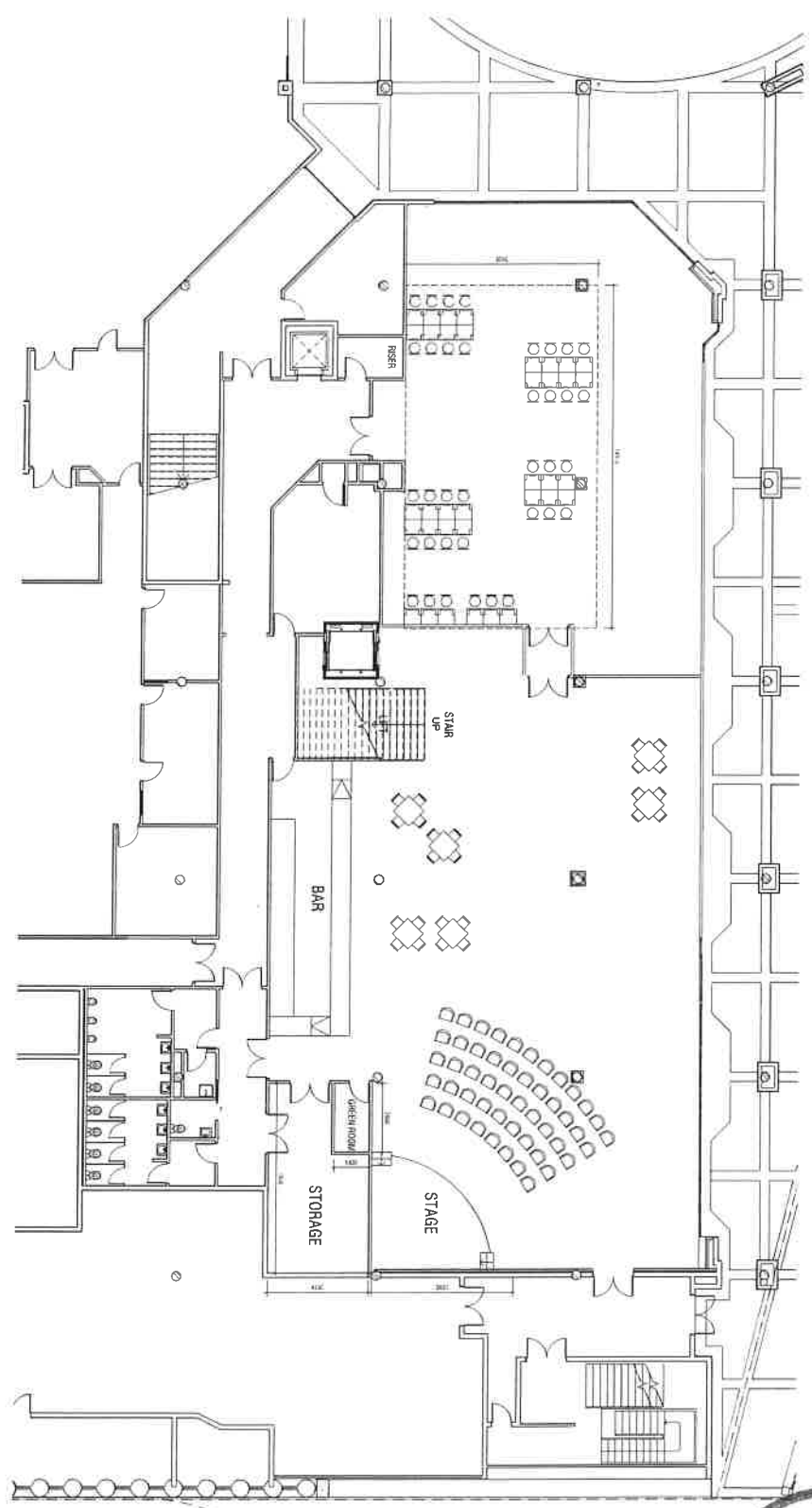
Modern Building Ltd & Services (NS) Pty Ltd
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 41 Macquarie Ave, Chesham NSW 2871
 17-18/300 Pitt St, Sydney NSW 2000
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SKYCITY HAMILTON
 346 VICTORIA STREET
 HAMILTON
 CASINO

SKYCITY HAMILTON LOWER
 GROUND FLOOR LAYOUT
 SUBMISSION 2012



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| SCALE | 1:100 |
| STATUS | CONCEPT |
| DESIGNED BY | MODERN BUILDING LTD |
| PROJECT NO. | SK-1008 (GF)-H |
| DATE | 17/11/13 |

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