

# Regulatory Impact Statement

## New Zealand International Convention Centre

### Agency Disclosure Statement

- 1 This Regulatory Impact Statement has been prepared by the Ministry of Business, Innovation and Employment.
- 2 It provides an analysis of options which would allow the government to obtain for New Zealand as a whole the economic benefits that flow from being able to attract and host international conventions, conferences and exhibitions of a considerably larger size than current New Zealand facilities allow. The Government's interest is to enable the design, construction and operation of a new 3500 delegate international-standard New Zealand International Convention Centre (NZICC) in Auckland, with the least cost to taxpayers.
- 3 The key concern in relation to the gambling regulatory changes that are to be given effect through the New Zealand International Convention Centre Bill 2013 (the Bill), is the potential impact this may have in increasing the incidence of problem gambling and its associated harm for New Zealand society.
- 4 Research shows there is a clear link between the availability of gaming machines and opportunities to gamble and the incidence of problem gambling. However, the research does not demonstrate a directly causal relationship between an increase in gaming machines and a commensurate increase in problem gambling incidence. Therefore, while it would appear likely that the additional opportunities to gamble presented by the concessions being offered to SkyCity could increase the incidence of problem gambling, there is no reliable way to quantify or cost the potential harmful effects of the regulatory changes being proposed in the New Zealand International Convention Centre Project and Licensing Agreement (the Agreement) in relation to the NZICC.
- 5 This Regulatory Impact Statement sets out to document the process undertaken by the Ministry to meet the Government's objectives, including: the options considered, the rationale for selecting each preferred option, and the implications for the proposed way forward. This includes qualitative and, where possible, quantitative analysis of the regulatory impacts of the preferred options, which is set out in paragraphs 32-139.
- 6 The Ministry considers this document to be a fair representation of the analysis of available options that was undertaken to achieve the Government's objectives, noting the constraints around quantifying the full costs and benefits of the Agreement.

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## Status Quo and Problem Definition

- 1 The size of the international business events market is growing. The International Congress and Convention Association (ICCA) estimates that there are approximately 19,000 non-government international association conferences organised in the world on a regular basis, with approximately 11,219 held in 2012 (compared to 10,070 in 2011, and 9,120 in 2010).
- 2 In 2012, only 45 of these were held in New Zealand due, in part, to New Zealand not having the right facilities to attract larger conferences (i.e. 1000 – 1999 delegates). New Zealand has some reasonable capability and capacity for hosting small-to-medium-sized international conferences at present and has hosted (though not at international standard) some reasonably large international conferences in the past. However, New Zealand faces increasingly significant constraints and competitive disadvantages when compared to the rising expectations of conference owners in relation to facilities and what is on offer elsewhere, especially in our closest competitor Australia. New Zealand is not currently competitive in international association conferences of over 1000 delegates because it lacks an appropriate scale facility.<sup>1</sup>
- 3 The problem for government is, although large convention centres can be operated at a profit, international studies<sup>2</sup> show that they rarely produce sufficient returns on the cost of the capital needed for their construction. For this reason, international convention centres are generally developed to generate broader economic benefits at the local and national level, and are therefore often publicly owned and resourced.<sup>3</sup>

## Objective

- 4 The Government's objective is for New Zealand to have an international-standard conference and exhibition centre that is designed, built, branded and operated to a sufficiently high standard to ensure it attracts conferences and is successful internationally. This will enable New Zealand to capture more of the growing international business events market. This is aligned with government's goals around increasing the number of higher value visitors (for example, visitors who spend more and stay longer).
- 5 The Government also expects that the New Zealand International Convention Centre (NZICC) should be built, maintained and operated at least possible direct cost to the New Zealand taxpayer.
- 6 As the preferred option for this construction project has implications for the gambling regulatory regime (including the minimisation of harm from gambling), a further objective (specific to that proposal) is to ensure that the purposes of the Gambling Act 2003 (the Gambling Act) are upheld and that potential negative gambling impacts from the proposed changes are, in part, mitigated.

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<sup>1</sup> International Convention and Exhibition Centre: *Summary of findings of a feasibility study and supplementary research*, September 2009, Auckland City Council and the Ministry of Economic Development, p.3.

<sup>2</sup> Such as convention centre developments and operations in Australia, UK, Europe, USA, South America and Asia discussed in '*International Convention and Exhibition Centre: Feasibility Study*', prepared by Horwath HTL for Auckland City Council, June 2009.

<sup>3</sup> International Convention and Exhibition Centre, September 2009, p.20.

## **Expected benefits to New Zealand from having an international-standard convention centre**

- 7 Creating the capacity to host large-scale business events and conferences has the potential to deliver considerable economic benefits to New Zealand. The immediate benefits of having an international-standard convention centre will be the additional expenditure by conference delegates, and their accompanying persons, at and around the events. Recent data show that international business event attendees spend about 40 per cent more per night than the average visitor.<sup>4</sup>
- 8 It is expected that New Zealand will gain \$90 million in additional expenditure by international tourists attending conferences at the NZICC each year, \$25 million of which will be spent outside the Auckland region.<sup>5</sup> Including domestic tourism expenditure, there is anticipated to be \$90 million total additional tourism expenditure in the Auckland region per annum.<sup>6</sup> This would mean an average annual increase of \$49 million in national Gross Domestic Product, with a \$23 million increase in Auckland's Regional Domestic Product.
- 9 A new 3500 delegate international-standard convention centre is expected to attract 31 additional conferences to New Zealand each year, which will mean an additional 33,000 conference attendees per annum.<sup>7</sup> Approximately 500 FTEs (or around 800 people) would be employed by the convention centre, with up to 1000 workers employed during the construction phase.<sup>8</sup>
- 10 Furthermore, there will be non-quantifiable benefits such as fostering commercial links between international and New Zealand businesses, and supporting innovation and knowledge transfer between international delegates and New Zealanders.

## **Assessment of proposals and funding options for a national convention centre**

### *Background*

- 11 On 24 March 2010, the Cabinet Economic Growth and Infrastructure Committee (EGI) agreed that to fulfil the government's objective of attracting more, and more targeted, conventions to New Zealand, a co-ordinated and nationwide approach needed to be taken. An approach was confirmed, which included the former Ministry of Economic Development (the Ministry of Business, Innovation and Employment (the Ministry)) progressing the case for an international convention centre [EGI Min (10) 5/3 refers].
- 12 Ministers directed the Ministry to seek high-level expressions of interest for creative and innovative ideas around the construction and funding of an international-standard convention centre. Auckland was selected as the preferred location as it is New Zealand's primary gateway, with good international connectivity and well-developed infrastructure (e.g. accommodation and hospitality), which are all vital to running successful international convention centres.<sup>9</sup>

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<sup>4</sup> Ministry of Business, Innovation and Employment, Convention Delegates Survey 2012.

<sup>5</sup> National and regional impact of the National Convention centre: A general equilibrium evaluation, May 2011 (NZIER), Table 2.

<sup>6</sup> Ibid., NZIER, Table 3.

<sup>7</sup> Horwarth quoted NZIER Table B1, p.17

<sup>8</sup> NZIER Table 1 and supplied by SkyCity (per advice received from a leading NZ-based contractor)

<sup>9</sup> International Convention and Exhibition Centre: *Summary of findings of a feasibility study and supplementary research*, September 2009, Auckland City Council and the Ministry of Economic Development.

- 13 The Ministry received five responses proposing sites and plans for the New Zealand International Convention Centre (NZICC) project. The proposals were evaluated, the advantages and disadvantages of each were assessed and the Ministry met with each submitter to discuss their proposals in more detail. SkyCity was selected through this process. A summary of the assessed advantages and disadvantages of each of the proposals is attached at Annex One.
- 14 The proposal from SkyCity stood out as the site is well located, SkyCity has experience in running a successful convention centre, has the resources (e.g. catering) to service the centre, and its offer to fund, build and operate the NZICC removed from central and local government the financial risks usually associated with such large capital developments.
- 15 This selection process has been investigated by the Office of the Auditor-General who concluded that there was no evidence to suggest that the final decision to negotiate with SkyCity was influenced by any inappropriate considerations.

#### *Funding options for SkyCity to construct the NZICC*

- 16 Once Government had selected the SkyCity location, it then had four potential options for funding the NZICC project, each with their own costs and benefits:
  - a. Option one: Government funds the NZICC project
  - b. Option two: Government enters into a Public Private Partnership arrangement with SkyCity to undertake the NZICC project
  - c. Option three (preferred option): SkyCity funds the NZICC project in exchange for regulatory concessions
  - d. Option four: Government abandons the current expressions of interest process.
- 17 Building a convention centre at the scale required to compete internationally is a significant investment, with additional investment often required in precinct and city infrastructure.<sup>10</sup> The current design for the NZICC will cost \$315 million to construct and, when the cost of the land is added in, has a total project cost in excess of \$400 million.
- 18 Convention and exhibition centres generally do not generate a commercial return on capital investment (i.e. land and construction costs). However, they can generate an operating surplus. International convention centres are usually built in order to deliver broader economic impact and facilitate the transfer of valuable knowledge and contacts to the benefit of the local economy. As private sector parties are unlikely to invest in the construction of a convention centre alone, these broader benefits are difficult to capture without public sector investment.<sup>11</sup>
- 19 The funding options were analysed against the overall objective for the NZICC project and within the context of a constrained fiscal environment. The main consideration was for the NZICC project to be achieved at least cost and risk to New Zealand taxpayers, and highest net benefit for New Zealand. This included assessing which option would most likely, over the long-term, ensure that the NZICC is maintained and operated to internationally comparable standards and quality.

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<sup>10</sup> Ibid, p.19.

<sup>11</sup> Ibid, p.20.

### *Summary of assessment of funding options*

- 20 Option one: This option would require the Crown to take on the fiscal risk of never making an adequate return on the capital investment. While the NZICC could operate at a profit, international studies show such centres rarely produce sufficient returns on the cost of the capital that is needed for their construction. Funding would be through general taxes, or potentially (though more controversial) through a targeted charge or rate (e.g. a bed tax) reflecting the businesses most likely to directly benefit from the convention centre. While this option might allow the government full control over leveraging the wider economic, social and environmental outcomes of the NZICC, it is the least preferred option given the current fiscal environment and the fact that running convention centres is not a core function of central government.
- 21 Option two: This option would likely be a Public Private Partnership arrangement where a private sector funder (e.g. SkyCity) contributes the capital costs to a level on which it can earn a commercial return over the period of its operation before transferring the assets back to public ownership.<sup>12</sup> As the NZICC is not forecast to generate significant operating returns, it is unlikely that this will provide a substantial contribution to capital costs. This would mean the government would eventually own infrastructure that had become a significant longer term operational and maintenance risk. Only one proposal for such an arrangement was offered to the government during the expressions of interest process. That was for a Build Own Transfer (BOT) scheme which had a cost of capital higher than the government would have been able to borrow the money for itself.
- 22 Option three: This option removes from central and local government the financial risks usually associated with such developments. This option would involve SkyCity recovering the capital costs of the NZICC through itself generating additional income in its Auckland casino arising from regulatory concessions. It would also mean SkyCity taking on the risks and costs associated with capital investment, on-going maintenance and upgrades, and day-to-day operations of the NZICC. This was assessed as the best option for government as it represents the least cost and lowest risk over the long-term.
- 23 Option four: This option would entail no change from the status quo and the government's objective not being met.
- 24 Option three was selected as it best met the Government's fiscal objectives, and in accordance with the process agreed by the Cabinet, the Ministry entered into negotiations with SkyCity. None of the other proposed options were assessed as being able to fulfil all of the government's objectives and were therefore not progressed.

## **Negotiations and Agreement with SkyCity**

### *The Agreement*

- 25 Having selected SkyCity and a preferred funding option (as above), the Ministry then negotiated an Agreement, on behalf of the Crown, with SkyCity on the basis of which SkyCity will design, develop, construct, and operate the NZICC [CAB Min (13) 13/10 refers].
- 26 *The NZICC Project and Licencing Agreement* (the Agreement) is conditional on the government's support for changes to the legislated gambling regime (the concessions) that will provide SkyCity with the opportunity to earn enough additional revenue to compensate for the costs to SkyCity of funding the NZICC.

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<sup>12</sup> Ibid, p.20.

- 27 Through the Agreement, government will get an international-standard convention centre with capacity to host 3,500 delegates. The NZICC will be built adjacent to SkyCity's existing casino between Nelson and Hobson Streets in central Auckland. The advantages of this site include its close proximity to hotels, restaurants, and shopping and easy access to public transport. All of those are important locational factors for successful convention centres internationally, and can be added to SkyCity's experience in running convention centres.

*Objective of the negotiations with SkyCity*

- 28 The objective of the negotiations with SkyCity was to achieve an agreement whereby the economic value of the concessions to be granted to SkyCity is reasonable having regard to the cost to SkyCity of developing, building and operating the NZICC and having regard to the parties' respective risks and returns.
- 29 Casinos are highly regulated environments that have staff trained to help people with gambling issues. There are existing strategies in place to prevent and minimise the harm caused by casino gambling. Nevertheless, the potential for increased harm and crime and dishonesty has been considered during negotiations. This has led to SkyCity agreeing to put in place in the Auckland casino enhanced harm prevention and anti-money laundering measures, materially more comprehensive than those which SkyCity is currently subject to, in order to minimise the potential problem gambling and money-laundering opportunities arising from the increase in opportunities to gamble that this Agreement would deliver.

*Independent assessment of the value of the Agreement*

- 30 The value of the concessions to SkyCity has been independently assessed by KordaMentha.<sup>13</sup> Their calculations have enabled the Crown and SkyCity to come to a balanced and fair deal that will enable SkyCity to recover the funds that will be invested in the NZICC construction and the land SkyCity will contribute to the project. The value of the concessions has been calculated based on the term of the Agreement, beginning from the date the construction contract is signed through to 30 June 2048 (when the Agreement ends).
- 31 The KordaMentha report records an approximate capital cost of \$402 million for the creation of the NZICC, inclusive of land (\$87 million) and construction and fit-out (\$315 million). KordaMentha's value assessment concluded that the present economic value of the regulatory concessions (described below), in exchange for SkyCity building, developing and operating the proposed NZICC, was a reasonable exchange. This recognised SkyCity will pay for the land and will incur the financing costs of the NZICC while under development. Accordingly, SkyCity's obligation to meet the construction and fit-out cost of the NZICC is to be limited to \$315 million.

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<sup>13</sup> KordaMentha, 'Report in connection with the New Zealand International Convention Centre,' 10 May 2013. Source: <http://www.med.govt.nz/sectors-industries/regions-cities/nz-international-convention-centre>. KordaMentha was appointed to provide a report giving an independent and impartial assessment of the reasonableness of the financial evaluation of the proposed transaction and the methodology applied to valuing it.

## Regulatory Impact Analysis

### Impact of the gambling regulatory concessions for constructing the NZICC

- 32 The cost to SkyCity of designing, building and purchasing or leasing land for the NZICC will be met by the value derived from a range of concessions to the gambling regulatory framework applying at SkyCity's Auckland casino. The concessions represent, contrary to the intention of the Gambling Act, an increase in casino gambling opportunities. Therefore, the concessions have implications for the current gambling regulatory framework. It may be argued that any legislation giving effect to the concessions in the Agreement is inconsistent with the fundamental common law principle of equality before the law to the extent that it modifies the Gambling Act to give effect to the regulatory concessions, however, the necessary legislative changes would reflect a commercial arrangement whereby the Crown and SkyCity receive approximately equal benefit.
- 33 The proposed gambling concessions raise concerns about a potential increase in the incidence of problem gambling, due to the subsequent increase in gambling opportunities at SkyCity's Auckland casino. Problem gambling is a significant health issue in New Zealand that affects some groups disproportionately and contributes to poverty and socio-economic inequalities.
- 34 While SkyCity's Host Responsibility Programme (discussed below) will retain its existing strategies along with the proposed new strategies to prevent and minimise any harm caused by the increased opportunities for casino gambling, it is assumed that the concessions are likely to result in an increase in the incidence of problem gambling associated with casino gambling. This section outlines the current framework for the regulation of gambling in New Zealand, the regulation of casino gambling, and the nature and impact of the gambling regulatory concessions for SkyCity. Information is also provided on the potential harm from the concessions, including potential problem gambling implications.

#### *Regulation of gambling*

- 35 The Gambling Act is the primary piece of legislation that regulates gambling activities in New Zealand. The Gambling Act sets out the authorised classes of gambling in New Zealand, and the licensing and other regulatory requirements for each class of gambling.
- 36 The purposes of the Gambling Act are to:
- a. control the growth of gambling
  - b. prevent and minimise the harm caused by gambling, including problem gambling
  - c. authorise some gambling and prohibit the rest
  - d. facilitate responsible gambling
  - e. ensure the integrity and fairness of games
  - f. limit opportunities for crime or dishonesty associated with gambling
  - g. ensure that money from gambling benefits the community
  - h. facilitate community involvement in decisions about the provision of gambling.

#### *Regulation of the casino sector*

- 37 Casinos in New Zealand were first introduced under the Casino Control Act 1990. This Act provided for the establishment and operation of casinos to promote tourism, employment and economic development. A total of six casinos were licensed under the Act. Casinos are the only commercial form of gambling in New Zealand.

- 38 In 1997, a statutory moratorium on new casino licence applications was introduced in response to community concerns about the potential proliferation of casinos. This moratorium was extended in 2000. As a result, no further casino licences were issued under the Casino Control Act 1990, which was subsequently repealed and replaced by the Gambling Act in 2003.
- 39 The six casinos are currently regulated under the Gambling Act. The Gambling Act prohibits any new casinos. It also prohibits increasing the opportunities for gambling in the existing casinos. Figure 1 shows the current casino gambling opportunities.

Figure 1: Casino gambling opportunities in New Zealand

Casino	Gaming machines	% of total gaming machines in NZ	Table games
Auckland SkyCity	1647	6.2	110
Hamilton SkyCity	339	1.3	23
Christchurch Casino	500	1.9	36
Dunedin Casino	180	0.7	12
Queenstown SkyCity	86	0.3	12
Queenstown Wharf	74	0.3	6
<b>TOTAL</b>	<b>2826</b>	<b>10.7</b>	<b>199</b>

- 40 Under the Gambling Act, casinos are required to have casino operator and venue licences. Casinos must hold a casino operator licence in order to conduct casino gambling. The Gambling Commission is responsible for all licencing decisions relating to casinos. When granting a casino operator’s licence, the Gambling Commission may specify any conditions that it considers appropriate.
- 41 As noted above, there are six casinos operating in New Zealand. Each of these holds a casino operator licence that stipulates the specific conditions for how casino gambling may be conducted in each casino. Conditions include how many gaming machines and gaming tables the licence holder may operate (including the specific ratios of game types and game mixes) and licence holders’ Host Responsibility Programme obligations. Host Responsibility Programmes set out the actions that each casino operator will undertake to prevent and minimise the harm caused by casino gambling.
- 42 The casino venue licence defines the area in which the casino can operate. The Gambling Commission is responsible for specifying the “gambling area” (i.e. the part of the casino where casino gambling is permitted), which is a condition of the casino operator licence.

#### *The gambling concessions*

- 43 The regulatory concessions, as set out in the Agreement, are:
- a. an extension of the Auckland Casino Venue Licence to 30 June 2048
  - b. an amendment to the address and description of the Casino Venue in the Auckland Casino Venue Licence
  - c. an additional 230 Single Terminal Gaming Machines
  - d. an additional 40 gaming tables (based on current average opportunities to game), together with a further 12 gaming tables with the ability, in respect of each of those 12 gaming tables, to substitute each table for the right to operate 20 fully Automated Table Game Player Stations (but which are not substitutable for Single Terminal Gaming Machines) per table



- e. up to 17 per cent of all Single Terminal Gaming Machines, Automated Table Games Player Stations and Electronic Table Games being permitted to accept banknotes with a denomination greater than \$20, but only in restricted areas<sup>14</sup>
  - f. the introduction of TITO (Ticket-in, Ticket-out technology) and card-based cashless gambling on all Single Terminal Gaming Machines, Automated Table Games Player Stations, Electronic Table Games and other table games at the Auckland Casino.
- 44 The regulatory concessions provided under the Agreement will be subject to the existing gambling regime. The Gambling Act will apply to the concessions, and all gambling conducted under the concessions, as if they were permitted under that Act. The concessions will therefore be administered, monitored, and enforced in accordance with the Gambling Act and any rules and regulations made under it.

#### *Nature of regulatory concessions*

##### Extension of the Auckland Casino Venue Licence

- 45 SkyCity's Auckland casino venue licence is due to expire in 2021. The concession is to extend the licence to a new expiry date of 30 June 2048.
- 46 Under the Gambling Act, a casino venue licence expires 25 years after the date the casino commenced operation. Before a venue licence expires, the licence-holder may apply to the Gambling Commission for a licence renewal. The application is accompanied by an independent report on the social and economic impacts of the continued operation and closure of the casino. The public is invited to make submissions on the application and to be heard at a public hearing. If an application is successful, a licence is renewed for a period of 15 years.
- 47 The concession would mean that the Auckland casino licence-holder will not be required to undergo the statutory venue licence renewal process prior to 2021 and (assuming a first renewal) again prior to 2036.
- 48 The concession represents material savings for the casino company in terms of not having to incur the costs associated with the licence renewal process. It also confers a benefit in terms of certainty around business continuity for the casino company. These savings and the business continuity will benefit the company and its shareholders.
- 49 Not having to undergo the statutory venue licence renewal process in 2021 and, potentially, again in 2036 removes two opportunities for mandatory independent assessments of the social and economic impact of the Auckland casino. It also removes the opportunities for local authority and public input into the venue licence renewal process for Auckland's casino.
- 50 However, throughout this 35 year extension of its casino licence SkyCity will continue to be subject to existing (and any new) casino laws and regulations. In the event that SkyCity fails to meet its obligations as set out in the terms of its licence, its licence could be suspended or cancelled under the current Gambling Act. The Agreement will not change the operation and enforcement of the existing gambling regime.
- 51 The net present value (NPV) of the licence extension has been independently estimated by KordaMentha to be in the range of \$65-\$115 million.

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<sup>14</sup> 'Restricted areas' are defined in in the Agreement as 'those areas which are restricted to players in the Platinum and VIP loyalty tiers and above (or its future equivalent as agreed in consultation with the Crown).'

### Extension of the Casino Venue

- 52 The extension of the casino venue is a logical and necessary consequence of the decision to extend gambling opportunities at the Auckland Casino. This will be effected by way of amending the casino licence.
- 53 The rules currently applied by the Gambling Commission to controlling the nature and extent of the gambling in such premises are not affected by this concession.

### Increase in casino gambling opportunities

- 54 The concessions provide for increases in opportunities for casino gambling at SkyCity's Auckland casino.
- 55 These increases come in the form of 230 Single Terminal Gaming Machines (commonly referred to as 'pokies') and 40 gaming tables, and up to 12 additional gaming tables which can be substituted for 20 Automated Table Game (ATG) terminals.
- 56 ATGs are machines that present electronic versions of casino table games (e.g. blackjack, roulette). They are designed to be played by one or more players at one time with multiple terminals for players. The concessions provide for an overall maximum of 240 Automated Table Games player stations (or player spaces). The Agreement also stipulates that the ATGs cannot be substituted for Single Terminal Gaming Machines.
- 57 ATGs have a game speed one-third slower than Single Terminal Gaming Machines but, as automated games, have a game cycle faster than traditional table games. Under the Gambling Act, ATGs are regulated as gaming machines. As such, ATGs provide interruptive player information displays in accordance with the Gambling (Harm Prevention and Minimisation) Regulations 2004 and provide access to the voluntary pre-commitment mechanism (discussed below).
- 58 The increased gambling opportunities will enhance the experience for patrons at SkyCity. There will be more choice and availability for those wishing to gamble on table games, gaming machines and ATGs at the casino. Enhancing the facilities, particularly for VIP players, in SkyCity's Auckland casino provides more opportunities to attract more 'high rollers'. In addition, improvements allowed under the Agreement will enable SkyCity to attract more international gamblers with associated increases in tourist expenditure for New Zealand.
- 59 The numbers of Single Terminal Gaming Machines outside of casinos in the Auckland region has significantly reduced in the last nine years, and is projected to continue to decline further. With the additional gaming machines allowed for in the Agreement, the total number of Single Terminal Gaming Machines in the Auckland region will still be below the total number in 2009.

Number of Class 4 gaming machines (pubs and clubs) by year (31 December) in the Auckland Region:

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013*
<b>Total</b>	5,111	4,940	4,728	4,640	4,576	4,450	4,245	4,227	4,059	4,054

\* Year to March

- 60 However, the increase in gambling opportunities represented by the additional machines and gaming tables allowed for in the Agreement has the potential to lead to an increase in the incidence of gambling-related harm. This is discussed further below.
- 61 The NPV of the increase in gambling opportunities has been independently estimated by KordaMentha to be in the range \$244-\$325 million.

Banknote acceptor denomination increase in restricted areas within the casino

- 62 Under the Gambling Act, a casino operator is not permitted to operate Single Terminal Gaming Machines or ATGs that can accept banknotes with a denomination greater than \$20.
- 63 A concession in the Agreement provides that banknote acceptors on gaming machines and ATGs will increase from \$20 notes to \$100 notes in certain restricted areas. These areas already exist at the Auckland casino and are accessible only on presentation of a loyalty card that identifies the player. There will be no change to the banknote acceptor limit of \$20 on the main gambling floor.
- 64 The \$20 statutory limit on gaming machine banknote acceptors is designed to discourage high levels of expenditure by individual gamblers and facilitate breaks in play. The Australian Productivity Commission concluded that prohibiting note acceptors or limiting their use to low denomination notes was a useful harm minimisation measure. It found that a lower cash input limit would act as a brake on high intensity gaming machine play.<sup>15</sup>
- 65 The increase in banknote acceptors to \$100 in restricted members-only areas will provide added convenience for some casino gaming machine players. It may also facilitate higher levels of player expenditure and is likely to be more attractive to at risk and problem gamblers than to non-problem gamblers. However, as most play in restricted areas is carded and tracked by individuals, SkyCity will be able to monitor and assess gambling behaviours in accordance with its regulatory obligations.

Expanding Ticket-in Ticket-out (TITO) facilities on all gaming machines and the introduction of cashless card-based gambling

- 66 TITO facilities enable gaming machine players to gamble with tickets with a stored monetary value instead of cash. The machines continue to accept cash but are also capable of accepting tickets with a pre-purchased amount credited to it. Winnings or remaining credits are paid by dispensing a new ticket. If not inserted into another machine, tickets can be redeemed for cash at a cashier station or an automatic kiosk.
- 67 SkyCity's Auckland casino is presently the only New Zealand casino where TITO is permitted. SkyCity is permitted to operate 300 TITO-enabled machines under rules and standards approved under the Casino Control Act 1990. There is no current provision for further TITO facilities at SkyCity or at the other five casinos.
- 68 TITO is run on higher denomination machines (i.e. it is not run on 1c, 2c gaming machines), and the maximum individual TITO ticket limit for inserting into a gaming machine is \$500 (although multiple tickets may be inserted). The ticket-out limit (i.e. the ticket printed by a machine) is \$10,000.
- 69 The concession is to permit TITO on all of SkyCity's Auckland casino gaming machines. The \$500 ticket-in limit would also be removed. However, in non-restricted areas a ticket size limit of \$500 would exist for kiosks and purchases of tickets of greater value than this at a cash desk would require the provision of identification. In the restricted areas, players would be permitted to purchase tickets up to \$1,000 at kiosks and insert individual tickets into a machine to the value of the anti-money laundering limit (\$6,000 from 30 June 2013).

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<sup>15</sup> Productivity Commission 2010, *Gambling*, Report no. 50, Canberra. Section 11.3.

- 70 The concession limits the ticket-out size in non-restricted areas to \$500 and \$6000 in restricted areas. In non-restricted areas kiosks will be limited to converting tickets of \$500 or less and will pay out in denominations no greater than \$20. Identification will be required for redemptions greater than \$500 which must be made at a cash desk. In restricted areas the kiosks will have a \$1,000 ticket redemption limit.
- 71 The concessions also allow for card-based cashless gambling. This form of gambling is account based and enables play to be tracked against a unique account. Loyalty cards can be used for this purpose and are associated with a named individual. The alternative is a 'white card' which is associated with a unique account identifier. Restrictions have been placed on kiosk and cash desk transactions using these cards.
- 72 TITO and card-based gambling are forms of cashless gambling. A report for the British Gambling Commission found that the empirical evidence regarding the use and impact of cashless technology in gambling was limited.<sup>16</sup> That report states:

*To date, there has been no empirical research which has directly investigated the impact of ticket-based technology on problem gambling and the potential for promoting responsible gambling, despite the strong demand from various stakeholders for an evidence base to inform key policy decisions in this area.*<sup>17</sup>

*Therefore, although there is currently no empirical evidence on the impact of ticket-based systems on problem gambling and the promotion of responsible gambling, there seems to be some consensus among experts participating in the White et al survey that ticket-out payments are likely to have minimal impact in exacerbating problem gambling.*<sup>18</sup>

*Furthermore, card-based options may also permit auditing through player tracking which may reduce the level of money laundering in this type of gambling. Hence, it is important to consider these potential benefits when reviewing the advantages and disadvantages of this technology.*<sup>19</sup>

- 73 Despite these findings, but in line with the Gambling Act's purpose of minimising and preventing harm, the Department of Internal Affairs has not to date progressed the introduction of TITO or other cashless technology into the sector because of harm prevention and minimisation concerns.<sup>20</sup> Those concerns include facilitating ease of player movement between gaming machines and negating natural breaks in play (e.g. attendant cash-out). The technology may also reduce the harm prevention benefits of the \$20 note restriction discussed above with the ability to rapidly load large sums onto gaming machines.
- 74 In addition, concerns exist that it may facilitate dissociative behaviour and, in the case of TITO technology, provide greater player anonymity. These referenced concerns have established associations with problematic gambling behaviour. The Ministry of Health considers that TITO has limited value as a measure to prevent or minimise gambling harm. The British Gambling Commission report also states that:

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<sup>16</sup> Gambling Commission (2008), *Cashless and card-based technologies in gambling: A review of the literature*. London: Gambling Commission.

<sup>17</sup> Ibid. p.57.

<sup>18</sup> Ibid, p.58.

<sup>19</sup> Ibid. p.71.

<sup>20</sup> Department of Internal Affairs, *Cashless Gambling – Interim Position Paper*, 21 September 2006. [http://www.dia.govt.nz/diawebsite.nsf/Files/CashlessGamblingPaper/\\$file/CashlessGamblingPaper.pdf](http://www.dia.govt.nz/diawebsite.nsf/Files/CashlessGamblingPaper/$file/CashlessGamblingPaper.pdf)

*The vast majority of stakeholders were either undecided or disagreed that ticket-based technology could prevent or reduce harm.<sup>21</sup>*

- 75 The reported advantages of TITO technology for the casino operator, when compared to using banknotes and coinage, included lower gaming machine repair costs, lower overheads, and lower personnel costs. This would be a significant change for SkyCity who currently has very large sums of cash on hand every night in order to keep its gaming machines going. Because of the reduced money handling, TITO systems are considered to be more secure and to promote staff and customer safety. It has been argued that cashless technology could also allow gamblers to end sessions of play more easily.
- 76 The KordaMentha Report concludes that the introduction of TITO is likely to increase Single Terminal Gaming Machine revenues by 6 per cent and ATG revenues by 4 per cent, which may be indicative of more intensive play at TITO-enabled machines.
- 77 The NPV of the introduction of TITO/cashless gaming has been independently estimated by KordaMentha to be in the range of \$84-88 million.

#### *Potential increased risk of harm from gambling*

- 78 Most adults in New Zealand gamble at least occasionally. Most of those who gamble enjoy doing so, and most gambling does not cause harm either to the gambler or to others. Even so, a number of people experience harm as a result of their own or someone else's gambling.
- 79 The concessions in the Agreement have potential gambling-related harm implications. Some of the agreed concessions could lead to an increase in the number of people seeking help who cite problems linked with casino machines or casino table games.
- 80 Harm from gambling can include, among other things, relationship breakdown, depression, suicide, reduced work productivity, job loss, financial problems (including debt and bankruptcy), and various types of gambling-related crime (including family violence, crime to finance gambling, and using gambling to launder the proceeds of crime).
- 81 There are 'ripple effects': harms can and often do extend beyond gamblers to encompass family members (especially children), whānau, friends, employers, colleagues and whole communities.<sup>22</sup>
- 82 It is difficult to quantify the potential size of any increased risk of harm because estimates of the prevalence of harm and the risk of harm can vary from one piece of research to another, depending on the date of the research, the size and response rate of any survey involved, its methodology, how harm is assessed (including any problem gambling screening instrument used), and how gambling and an adult are defined.
- 83 Numerous studies in New Zealand and around the World have found that 'continuous' forms of gambling<sup>23</sup> are more likely than 'non-continuous' forms to be associated with harm and the risk of harm to gamblers and those around them.

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<sup>21</sup> Ibid. p.8 (paragraph 1.28).

<sup>22</sup> Ministry of Health and Department of Internal Affairs, Regulatory Impact Statement '*Problem Gambling Levy for 2013/14 to 2015/16*', 2013, p.4. (ref. Bellringer, Abbott, Coombes, et al 2008; Delfabbro 2012; Productivity Commission 1999, 2010; SHORE 2008).

- 84 Gaming machine gambling is a continuous form of gambling that is particularly likely to be associated with harm and the risk of harm. In Australia, for example, the Productivity Commission concluded after two inquiries a decade apart that people playing casino or non-casino gaming machines face greater risks than people who participate in other gambling activities (such as lotteries), and that the likelihood of harm rises steeply with the frequency of gaming machine gambling and with gaming machine expenditure levels.<sup>24</sup>
- 85 Most people in New Zealand do not play gaming machines, and most of those who do, play only occasionally. Yet most of the money spent on gambling in New Zealand is spent on gaming machines, and substantial proportions of it by people who play machines frequently. New Zealand studies<sup>25</sup> have found that gaming machines are associated with harm more often than any other form of gambling.
- 86 In one New Zealand study,<sup>26</sup> heavier gaming machine gambling was associated with poorer self-ratings on numerous domains of life. Heavier gambling on casino machines was associated specifically with several poorer self-ratings for Māori and Pacific people, but with more-positive self-ratings on several domains of life for Pākehā and one domain of life for Chinese and Korean people.
- 87 The differences in the risks associated with different forms of gambling seem to be similar whether the focus is on problems associated with a person's own gambling or on problems associated with someone else's gambling.
- 88 The 2010 Health and Lifestyles Survey asked those who reported various issues in the previous year what form of gambling was *most often* involved. Casino gaming machines (around 2,800 machines in 6 venues) ranked second or third on most indicators of harm, behind non-casino gaming machines (17,670 machines in 1,381 venues as at 31 December 2012).

*Potential risk of gambling-related harm from regulatory concessions in the Agreement*

- 89 The 2011/12 New Zealand Health Survey estimated that around 89,000 adults had experienced problems in the previous 12 months as a result of someone else's gambling. 33.2 per cent of those named casino gaming machines as at least one of the forms involved, and 10.3 per cent named casino table games. This figure does not include children, who are also impacted by gambling-related harm.
- 90 Of the around 89,000 people that were affected by someone else's gambling, about 29,548 of them were *at least partly affected* by casino machines and about 9,167 of them were *at least partly affected* by casino tables. We would expect these numbers to be higher if children were included.

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<sup>23</sup> A continuous form of gambling is characterised by the opportunity to bet money, have the result determined, collect any winnings, and bet again, in a rapid cycle. Examples include gaming machines, casino table games, and betting on horse races. Continuous forms of gambling can be contrasted with non-continuous forms like lotteries, in which there is typically some time between the purchase of a ticket, determination of the result, and the opportunity to use any winnings to purchase another ticket.

<sup>24</sup> Ministry of Health and Department of Internal Affairs, Regulatory Impact Statement '*Problem Gambling Levy for 2013/14 to 2015/16*', 2013. (ref. Productivity Commission 1999, 2010).

<sup>25</sup> '*Problem Gambling Levy for 2013/14 to 2015/16*', 2013, p.7. (ref. Abbott and Volberg 2000; Gray 2011; Health Sponsorship Council 2012; Ministry of Health 2009, 2012a; SHORE 2008).

<sup>26</sup> '*Problem Gambling Levy for 2013/14 to 2015/16*', 2013, p.7. (ref. SHORE 2008).

- 91 There are currently 2,826 gaming machines and 199 tables in New Zealand's casinos, so the proposed concessions of 230 gaming machines and 40 tables represent an 8.1 per cent increase in the number of casino gaming machines in New Zealand, and a 20 per cent increase in the number of tables in New Zealand respectively. If this increase led to a corresponding increase in the number of people experiencing problems as a result of someone else's gambling it is possible to hypothesise that an additional 4,779 (8.1% of 59,000) people may be *at least partly affected* by casino machines and an additional 3,600 *at least partly affected* by casino tables (20% of 18,000). The proposed concession of 240 ATG terminals, if equated with 12 gaming tables, represents an additional 6 per cent increase.
- 92 It is difficult to estimate the additional numbers of people who may experience problems as a result of their own gambling. However, one recent meta-analysis concluded that there is an increase in problem gambling prevalence at an average increase of 0.8 problem gamblers, for each new gaming machine.<sup>27</sup> The analysis aggregated data from 34 problem gambling surveys in Australia and New Zealand between 1991 and 2009, and concluded that, "the findings strongly indicate that the prevalence of problem gambling increases with increasing density of EGMs [Electronic Gaming Machines] at a rate of around 0.8 problem gamblers for each additional EGM". However, it is not clear that the findings would be directly applicable to an increase in gaming machine numbers in an established casino.
- 93 Putting a precise cost on this potential increase is also difficult. The cost to government of the problem gambling intervention services funded by the Ministry of Health is reimbursed by way of the Problem Gambling Levy, which is paid by the main gambling operators. Reportedly, only a fraction of those affected by problem gambling seek help and the cost of intervention services is in any case only a fraction of the costs (harms) associated with problem gambling (such as suicide; family violence; children inadequately clothed and fed, and other examples of deprivation and poor parenting; costs to the justice system, to businesses, and to community groups of gambling-related crime; lost productivity etc.).
- 94 Intervention service statistics indicate that about 10 or 11 per cent of those who seek help cite problems with casino machines, and 6 to 8 per cent cite casino tables.<sup>28</sup>

#### *Potential risk of money laundering*

- 95 Cash intensive industries such as casinos are attractive to money laundering activity. New Zealand's *National Risk Assessment 2010* assessed casinos as presenting moderate to high risk of money laundering.<sup>29</sup> For this reason, casinos (including all SkyCity casinos) are subject to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the AML/CFT Act), which comes into force on 30 June 2013.
- 96 Nothing in the Agreement affects SkyCity's obligations under the AML/CFT Act. Those obligations include:
- a. developing a risk assessment of the money laundering and terrorism financing risks facing SkyCity
  - b. appointing an AML/CFT compliance officer

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<sup>27</sup> J Storer, M Abbott and J Stubbs (2009) Access or adaptation? A meta-analysis of surveys of problem gambling prevalence in Australia and New Zealand with respect to concentration of electronic gaming machines, *International Gambling Studies*, 9:3, 225-244.

<sup>28</sup> <http://www.health.govt.nz/our-work/mental-health-and-addictions/problem-gambling/service-user-data/intervention-client-data>

<sup>29</sup> <http://justice.govt.nz/policy/criminal-justice/aml-cft/publications-and-consultation/national-risk-assessment-2010>, at pp 17, 31.

- c. designing and implementing an AML/CFT programme, which must include:
  - i. vetting senior managers and staff engaged in AML/CFT related duties
  - ii. training senior managers and relevant staff on AML/CFT related matters
  - iii. complying with customer due diligence (CDD) requirements, including determining when enhanced CDD is required, when simplified CDD might be permitted, and when CDD can be carried out by a person other than the reporting entity
  - iv. reporting suspicious transactions
  - v. monitoring and record keeping, especially in relation to specified high-risk transactions and business relationships
  - vi. policies and procedures for how SkyCity will manage and mitigate its risks of money laundering and financing of terrorism
  - vii. monitoring and managing compliance with the AML/CFT programme.

97 However, there are aspects of the regulatory concessions that potentially raise the risk of money laundering through SkyCity.

98 For example, the anonymity that can be associated with TITO technology has the potential to facilitate money laundering, by increasing the potential for currency refining and ticket structuring.<sup>30</sup> In effect, this means that low denomination notes could be fed into one or more gaming machines or kiosks and then be redeemed by ticket into high denomination notes or casino cheques. Increasing the use of TITO technology (and raising the denominations that can be fed into a machine) may therefore increase the potential for money laundering.

99 Increased use of “white cards” may also lead to increased risk of money laundering. White cards are an account-based system with a unique identifier that permits transaction sequences to be tracked. However, the form of identification information associated with each card will depend on the “business relationship”<sup>31</sup> between the casino and the white card holder(s).

100 The limits on anonymous cashing-out of TITO and white cards described in paragraphs 69-71 of this paper are aimed at mitigating this potentially higher risk of money laundering.

*Current and future measures to minimise potential gambling-related harm and to mitigate potential increased risk of money laundering*

101 SkyCity’s Host Responsibility Programme and Problem Gambler Identification Policy place significant obligations on the casino operator to prevent gambling related harm and detect potential or actual problem gamblers. All staff are trained in the indicators of problem gambling, processes are in place for providing that information to the Host Responsibility Executives, and obligations exist around the assessment and treatment of that information.

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<sup>30</sup> FATF Report: *Vulnerabilities of Casinos and Gaming Sector* (2009) pp33-35:

<http://www.fatf-gafi.org/dataoecd/47/49/42458373.pdf>

<sup>31</sup> The establishment of a “business relationship” under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 requires the conduct of customer due diligence.



- 102 In particular, SkyCity has obligations to reactively and proactively use player data obtained from gambling tracked with loyalty cards. These obligations extend to examining data, such as the frequency, intensity and duration of play, to make assessments of problematic gambling behaviour.
- 103 In order to minimise the potential harm and money-laundering opportunities arising from the increase in opportunities to gamble that the Agreement delivers, SkyCity has agreed to introduce, at the same time as any of the concessions described above are introduced, additional host responsibility measures that go beyond those already promised or planned.
- 104 SkyCity's current host responsibility programme (which has recently been described by Associate Professor Paul Delfabbro as "one of the most rigorous in the world"<sup>32</sup>) will be augmented with the following three measures:
- a. a predictive model created by Focal Research which analyses loyalty data as a tool to identify players who are at risk from gambling harm
  - b. a voluntary pre-commitment system whereby Single Terminal Gaming Machine and Automated Table Game players may elect to restrict the amount of time they play and/or the amount they spend on machines over a selected period
  - c. a doubling (from 3 to 6) of the number of Host Responsibility Executives employed at SkyCity Auckland so as to provide 24 hours a day, 7 days a week, coverage at the SkyCity Auckland site.
- 105 The proposed additional harm minimisation measures will become part of the SkyCity's Auckland casino Host Responsibility Programme that is monitored by the Department of Internal Affairs and regularly reviewed by the Gambling Commission. All of these measures will be effective in detecting problem gambling behaviours. However, none of them can completely remove all possibilities of additional harm from gambling. For example, players who opt for voluntary pre-commitment can continue to play beyond their agreed limit by removing their loyalty card (which identifies them) from the machine.
- 106 The effectiveness of voluntary pre-commitment systems as a measure to address the risk of gambling harm is not known. The evidence from Australia suggests that the uptake of voluntary pre-commitment is typically low and that many players do not adhere to the limits they set.<sup>33</sup>
- 107 As part of its current Host Responsibility Programme, SkyCity previously committed to investigate the predictive software model. The Agreement will ensure the model is introduced. The predictive model might have considerable potential as a tool to prevent and minimise gambling harm. However, the Ministry of Health has noted that the success of the predicative software model depends on factors such as, the performance standards that the service provider must meet, validation of the software by independent research,<sup>34</sup> regular refinement of the model, and clear obligations on SkyCity if problems are identified.

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<sup>32</sup> Submission to the Gambling Commission review (2013).

<sup>33</sup> Summarised in Delfabbro P.H. (2012). *Australasian Gambling Review (5<sup>th</sup> Edition)*. Adelaide, Independent Gambling Authority. pp 219-225.

<sup>34</sup> The principals of Focal Research have already developed criteria for such a validation. See: Schellinck T and Schrans T. (2011) Intelligent Design: How to model gambler risk assessment by using loyalty tracking data. *Journal of Gambling Issues*: Issue 26, pp 51-68.

- 108 From a currency refinement standpoint, money laundering concerns are mitigated to some extent by the \$500 ticket-out limit in non-restricted areas, lower identification thresholds at the cash desk, and the requirement that kiosks are constrained to paying out winnings in \$20 denominations. These factors have the potential to inhibit money laundering typologies. In restricted areas, the majority of play will be tracked which helps provide transparency with respect to transactions.
- 109 In addition, card-based players' behaviour will be able to be tracked and monitored because of the Focal research software. Currently, 67 per cent of gaming machine turnover at SkyCity's Auckland casino is loyalty account based and associated with an individual and therefore able to be tracked at all times.
- 110 Also, SkyCity's obligations under the AML/CFT Act are designed to respond to instances where the risk of money laundering is increased. For example, section 30 of that Act requires SkyCity to monitor for, and report on, suspicious transactions and to take into account new technologies that might favour anonymity.
- 111 Non-compliance with the harm minimisation measures may also lead to the suspension or termination of SkyCity's casino licence. The AML/CFT Act has its own penalties regime where non-compliance is detected.

## **Other matters**

### *Designating land required for the NZICC*

- 112 The Agreement also provides for a covenant registered against the land on which the NZICC will be located. This is required to ensure the NZICC site (land) cannot be used for any purpose other than as a convention centre, however, will require the Property Law Act 2007 (PLA) to be applied in a situation to which it would not normally apply. The relevant provision in the PLA is section 307 - *Notification of covenants*.
- 113 The covenant that the Crown requires to be made by SkyCity is what is known as a covenant in gross. Covenants in gross are not currently able to be registered and are unenforceable under the PLA. However, there is a proposed Land Transfer Bill out for consultation that signals a law change that will make covenants in gross able to be registered. The link to the consultation draft is: <http://www.linz.govt.nz/sites/default/files/docs/surveysystem/survey-publication/Land-Transfer-Bill.pdf>.
- 114 The covenant detailed in the Agreement will be given effect by legislation (discussed in the next section), so that section 307 of the PLA will apply to the NZICC covenant as if it were the kind of covenant allowed under section 307 so the NZICC covenant can be effective and registered despite the fact that the benefit is to the Crown and not to another piece of land.

### *Provisions for compensation to SkyCity if certain gambling regulations and casino duty rates change*

- 115 The Agreement specifies that SkyCity will be making an upfront investment of \$402 million (including \$315 million for the construction and fitout, and \$87 million in the provision of land) to build the NZICC, but it will take 35 years for the company to receive all the benefits of the regulatory concessions granted in return.
- 116 Given the size of the investment, the Agreement says that if the regulatory concessions are changed before the Agreement ends, SkyCity will be compensated by the Government under the Agreement. This provides SkyCity and the Crown with certainty over what would happen if any of the concessions changed.

- 117 Any compensation paid to SkyCity would be equivalent to the concessions lost over the time period for which they are not available to SkyCity. Any compensation will never exceed SkyCity's total investment in the NZICC (land and building) and any other assets it acquires or develops as a consequence of the Agreement.
- 118 The Government would also compensate SkyCity for any increase in casino duty in respect of SkyCity's casino business in Auckland from the signing of the Agreement until four years after the completion of the NZICC. It is important to note that the Problem Gambling Levy is not covered by this arrangement and any change in the Problem Gambling Levy is not subject to any compensation.

#### *Protection of intellectual property*

- 119 The Crown will grant an intellectual property licence to SkyCity in respect of the names "New Zealand International Convention Centre" and "NZICC", and any associated branding. The use of this licence will be subject to specific terms set out in the Agreement.
- 120 The effect of this licence will be to provide for the protection, and control over the use, of the names New Zealand International Convention Centre and NZICC, an important part of ensuring that the Agreement is enforceable, and that New Zealand recoups the benefits that will come from this intellectual property licence being in effect.

### **Implementation options**

#### **Form of legislation giving effect to the concessions**

- 121 The government had four options for how to give effect to the agreed concessions:
- a. Option one: amending the Gambling Act 2003
  - b. Option two (preferred option): introducing new legislation e.g. the New Zealand International Convention Centre Bill to give effect to the Agreement
  - c. Option three: introduce a new Act to implement changes for casinos in general
  - d. Option four: introduce a new Act regulating casino operations at SkyCity's Auckland casino.
- 122 The benefits, costs and risks of each option are outlined in this section.

#### *Option one: amending the Gambling Act 2003*

##### Benefits

- 123 Amending the Gambling Act (i.e. by a Gambling Amendment Bill) could involve wider consultation, increased scrutiny and therefore more public input. This would mean that other problems with the Gambling Act could be raised for resolution at the same time, for example increasing harm minimisation provisions for all forms of gambling. While this option could lead to a reduction in gambling opportunities nationally, for the purposes of the NZICC project there are significant costs and risks.

##### Costs and risks

- 124 Giving effect to the Agreement with SkyCity by way of an amendment to the Gambling Act may create unnecessary complexities. The complexities with a Gambling Amendment Bill include:

- a. the Gambling Act's purpose (which includes controlling the growth of gambling; and preventing and minimising the harm caused by gambling, including problem gambling) does not contain an objective for increasing economic development benefits such as those associated with the building of the NZICC, or for enhancing gambling and associated opportunities at SkyCity. It would be inappropriate to amend the purpose of the Gambling Act to reflect such outcomes
- b. there are difficulties associated with dealing with a matter specific to the holder of one casino licence (as part of a specific deal about a convention centre) in an Act that has much wider application to all forms of gambling and to all casino licence holders
- c. there may be potential problems of scope, as some of the matters that need to be in the NZICC legislation are not directly gambling related (as the gambling aspects relate only to the regulatory concessions) and these may not be able to be included in a Gambling Amendment Bill
- d. there is potential for people to argue for other amendments to be made to the Gambling Act that are outside the scope of the matters relevant to the Agreement with SkyCity and these may slow down the passage of the Bill and therefore delay the construction of the NZICC.

*Option two (preferred option): introducing new legislation e.g. the New Zealand International Convention Centre Bill*

#### Benefits

- 125 Option two would see the introduction of a standalone "New Zealand Convention Centre Bill" (the NZICC Bill).
- 126 The NZICC Bill would provide that where provisions of the Gambling Act and associated regulations differ from the arrangements described in the Agreement between the Crown and SkyCity, the Agreement takes precedence.
- 127 The arguments for a standalone NZICC Bill that does not amend the Gambling Act are:
  - a. the concessions granted in the Agreement are clearly applicable to only the holder of the Auckland casino operating licence and not all casino licence holders
  - b. the concessions would continue to be regulated under the Gambling Act in the same way as the same gaming devices are currently regulated, giving certainty to both the regulators and SkyCity
  - c. NZICC-specific gambling changes will not "clutter" the Gambling Act with details relating to only the holder of one licence
  - d. the NZICC Bill can deal with other matters (such as intellectual property protections and enforcement of the Agreement) that would not sit well in the Gambling Act
  - e. the gambling concessions provided for in the NZICC Bill can be read in the light of the NZICC Bill's purpose (which includes providing for potential economic benefits to New Zealand)
  - f. the scope of the Bill can be more easily contained than could a Gambling Amendment Bill, as it avoids the Bill being seen as a vehicle for wider-ranging gambling changes (which may potentially hold up the Bill's progress)
  - g. should the stand-alone NZICC Bill be amended or repealed in the future it will not require an amendment to the Gambling Act. Instead it can be amended or repealed in its own right.

### Costs and risks

- 128 This is a potentially controversial but not an uncommon approach to giving effect to agreements between the New Zealand Government and other parties. There are other precedents for giving effect to Agreements in legislation (though each has its own variations).
- 129 These precedents include:
- a. some Treaty Settlement Bills (recent examples of which do not attach the settlement agreement reached but place an obligation on the Secretary of Justice to publish it on the web)
  - b. section 19 of the Electricity Amendment Act 2001 which specifies the relevant transitional pricing methodology for Transpower is the “pricing methodology contained in the Pricing for Grid Connection Services from 1 April 2001 document generated by Transpower (without attaching that document to the legislation)
  - c. the Manupouri –Te Anau Development Act 1963 (which attached an agreement between the Crown and Consolidated Zinc Proprietary Limited in respect of the use of certain lakes and rivers for industrial and other uses). The Act allowed the agreement to be amended by Order in Council
  - d. the Reserves and Other Lands Disposal Act 1969, which gave effect to an agreement between the Crown and Comalco Industries’ Pty Limited in respect of land on the Tiwai Peninsula
  - e. the Sharemilking Agreements Act 1937, which contains minimum contractual conditions for sharemilking agreements in the schedule of the Act, which has been amended recently by Order in Council.
- 130 However, this approach is arguably a more “up-front” way of handling the regulatory concessions because:
- a. it lays out the Agreement that has been reached between the Government and SkyCity in its entirety, rather than making less visible changes to the Gambling Act by way of an amendment Bill
  - b. the Agreement will be made available to the public and the Select Committee so they can comment on the nature of the concessions
  - c. the Select Committee members can decide to support or not support the NZICC Bill in its entirety because it is a framework for giving effect to the concessions in the Agreement. In other words, they can decide whether or not they support the commercial deal reached between the Government and SkyCity
  - d. it provides SkyCity with greater certainty as the Bill proceeds through the House because a decision will be made by the House on whether the entire Agreement should proceed (or not) rather than the parties to the Agreement not knowing whether they will need to attempt to renegotiate the Agreement based on changes made at Select Committee
  - e. the Select Committee could decide to reshape the approach taken in the NZICC Bill and recommend that the concessions be put into the legislation itself if they thought it appropriate.

*Option three: introduce a new Act to implement changes for casinos in general*

Benefits

- 131 Introducing a new Act could enable the legislation regulating casino gambling to have a mandate broader than the Gambling Act. For example, the previous Casino Control Act 1990 (repealed in 2004) specifically mentioned the encouragement of tourism, employment and economic development opportunities through casino development, which fits with the broader objectives and aims of the NZICC project.

Costs and risks

- 132 The Casino Control Act 1990 was repealed and casino regulation and licencing was brought under the Gambling Act to make casino gambling regulation consistent with the government's overall policy on gambling. Any decision to change the way in which all casinos are regulated would be highly controversial and likely to face opposition. A separate Act would exceed what the Government is seeking to achieve with this Agreement, and would likely lead to increased casino gambling opportunities more broadly across New Zealand.
- 133 Separate casino regulations would mean the purposes for which gaming is permitted in New Zealand would become inconsistent. For example, the Casino Control Act also included provision for a separate licensing body, the Casino Control Authority, which licensed casino premises and operators, and was responsible for setting casino rules. Separating out casino gaming from the broader role of the Gambling Commission would necessitate additional resourcing for implementing the legislation (e.g. licencing and enforcement), as it would be inconsistent with the mandate of the Gambling Commission.

*Option four: introduce a new Act regulating casino operations at SkyCity's Auckland casino*

Benefits

- 134 This would be an Act that essentially replicated the Gambling Act 2003 but introduced an economic development benefit purpose statement and set in statute, rather than the Agreement, the concessions that have been granted to SkyCity in return for designing, building and operating the NZICC. It would be clear that the regime set out in this Act would apply only to the Auckland casino.

Costs and Risks

- 135 There would be increased costs and regulatory uncertainty in enforcing and complying with two different Acts ostensibly upholding the same regulatory framework.

*Final assessment*

- 136 As the concessions differ from the current regulatory regime, which applies to all New Zealand casinos, the assessment of the options has been conducted to find the most effective way to give effect to these concessions, at the smallest risk to government and the New Zealand public, and at least additional cost of regulation.
- 137 Through this assessment, option two – introducing a separate New Zealand International Convention Centre Bill is preferred.

## Consultation

- 138 Due to the confidential nature of the negotiations consultation throughout the negotiating process was kept to a minimum. Since the announcement of the Heads of Agreement the following organisations have been consulted on the Regulatory Impact Statement, the details of the concessions and the proposed regulatory changes: Department of Internal Affairs; The Treasury; Ministry of Health; Ministry of Justice; Gambling Commission; Ministry of Pacific Island Affairs; Ministry of Social Development; Ministry of Women's Affairs; New Zealand Police; Office of Ethnic Affairs; and Te Puni Kōkiri.

## Conclusions and Recommendations

- 139 In order to achieve the Government's objective of getting an international-standard convention centre capable of hosting 3500 delegates, and increases in Gross Domestic Product due to additional delegate spending, the following are the preferred options:
- a. Part one: That SkyCity designs, builds and operates the NZICC
  - b. Part two: In order to achieve the government's objective of designing, constructing and operating the NZICC with minimal fiscal risk for government, and having regard to the costs to SkyCity of developing, building and operating the NZICC, the government was prepared to grant regulatory concessions, the value of which could be judged to be reasonable when the costs and the parties' respective risks and returns are taken into account. An independent economic assessment by KordaMentha has confirmed that to be the case in this instance
  - c. Part three: There are potential negative implications (for example, increased problem gambling and money laundering opportunities) from the introduction of the concessions. These risks will be mitigated to some extent through additional harm minimisation measures set out in the Agreement with SkyCity. However, the additional gaming devices in the Auckland casino could result in increased gambling-related harm, though it is worth noting that the total number of gaming machines in the Auckland region has been declining since 2004 (see paragraph 59). The cost of the potential harm has to be balanced against the fact that only a small portion of gamblers are prone to harm and the fact that the NZICC will bring considerable economic benefits for New Zealand
  - d. Part four: Regulatory change is required to give effect to the Agreement with SkyCity. The preferred option is to introduce a separate New Zealand International Convention Centre Bill, which will minimise the potential costs and risks associated with other forms of regulatory change.
- 140 The preferred options, while entailing the social risks identified above, have been assessed as the best way of enabling the government to achieve its objective of obtaining the economic and other benefits of having an international-standard convention centre in New Zealand, and mitigating the risks and costs (short and long term) usually involved with building and running such centres.
- 141 The Ministry's assessment is that the potential costs of the regulatory concessions, in terms of harm from problem gambling, are outweighed by the benefits to New Zealand from having an international-standard convention centre, the NZICC.

## Implementation

- 142 The NZICC will be fully owned, operated and funded by SkyCity, with provisions enabling financial penalties or ultimately the purchase or leasing of the NZICC by the Crown should operational and other standards not be met.

- 143 The Agreement and the NZICC Bill will be enforced and monitored by the Ministry of Business, Innovation and Employment. As well, Tourism New Zealand will be responsible for complementary initiatives including increasing New Zealand's profile as a conventions and incentives destination internationally.
- 144 There may be some additional costs for enforcing and monitoring implementation of the concessions, including the increased harm minimisation measures, on the Department of Internal Affairs and the Gambling Commission. The Department of Internal Affairs, through the Gambling Act, will retain their role in regulating gambling and the Gambling Commission will continue in its role in casino licencing and enforcing Host Responsibility Schemes. However, because the fundamentals of the regime established in the Gambling Act 2003 remain in place and all the new concessions will be administered, monitored and enforced in the same way as the existing law, any additional costs will be minimal.
- 145 One of the key tools that the Department of Internal Affairs has for ensuring compliance with the Gambling Act is its power to apply to the Gambling Commission under section 144 of the Gambling Act for an order that a casino licence be cancelled or suspended for a breach of that Act or a condition of the licence or minimum operating standards. A licence suspension would have such negative reputational impacts that even the possibility that the Department might make an application might be enough to ensure compliance.
- 146 SkyCity's casino licence requires it to report to the Gambling Commission every six months on implementation of its Host Responsibility Programme, with provision for the Commission to review the Programme every two years. SkyCity must comply with the harm minimisation mechanisms imposed on it, if it does not, the Gambling Commission can suspend or terminate its casino operator's licence.
- 147 The additional harm minimisation measures set out in the Agreement will be written into SkyCity's Auckland Casino Host Responsibility Programme, which will continue to be policed by the Gambling Commission.

### **Monitoring, Evaluation and Review**

- 148 There are clauses within the Agreement enabling review of the non-gambling aspects of the legislation and the conditions on the Agreement between the Crown and SkyCity.
- 149 The additional gaming machines and tables provided under the Agreement will remain subject to all the regulations, conditions, minimum operating standards, game rules and minimum standards that in their current format, or as amended in the future, govern the use of such devices. The interpretation or approach taken by any body responsible for regulating or otherwise making or enforcing regulations, rules or standards in the gambling area will not be affected by the deal.
- 150 The Gambling Commission retains its role in enforcing the Gambling Act and issuing/reviewing casino licences.
- 151 The Department of Internal Affairs will continue to administer the Gambling Act and any future amendments and how they interface with the NZICC Bill and the Agreement.
- 152 The NZICC Bill will include provisions that set out how the regulatory concessions in the Agreement will be given effect under the NZICC Bill and the Gambling Act. The NZICC Bill will specify that the Gambling Act applies to the concessions, and all gambling conducted under the concessions, as if they were permitted under that Act.



- 153 Under the NZICC Bill the Auckland casino concessions, and all gambling conducted under those concessions, will be administered, monitored and enforced in accordance with the Gambling Act 2003, including all regulations and rules under that Act. It will also include the provision (under section 370 of that Act) that enables the Secretary for Internal Affairs, the Gambling Commission, or the Police to make regulations to recover the direct and indirect costs of administering, enforcing and monitoring compliance with the Gambling Act.
- 154 The Ministry of Business, Innovation and Employment will monitor SkyCity's adherence to all parts of the Agreement except those relating to the regulatory and licensing concessions. This includes the achievement of the government's economic development objectives, in particular, increased delegate expenditure. One of the ways the economic benefits will be monitored is through the Ministry's Convention Research Programme (CRP). The CRP records MICE (meetings, incentives, conferences and exhibitions) activity in New Zealand, and estimates the contribution multi-day conventions make to the New Zealand economy. The CRP was established in 2009.
- 155 To ensure that SkyCity meets international standards in terms of the operation of the NZICC, Key Performance Indicators and other operational standards have been included in the Agreement and are backed-up by financial consequences for non-performance.

## Annex One – Summary of NZICC proposals at 12 June 2011

Proposal	Advantages	Disadvantages
<b>SkyCity,</b> Hobson/Nelson Streets	<ul style="list-style-type: none"> <li>• Location – very close to variety of accommodation options and other amenities (retail, restaurants and entertainment).</li> <li>• Within good walking distance to Queen Street and there are good public transport links to the site. Approximately 10-15mins walk from Britomart Transport Centre.</li> <li>• Large site (once additional land is purchased). Development could be a catalyst for regeneration of surrounding area.</li> <li>• SkyCity proposes to fund, construct and manage operations of the new centre (est \$350-\$400 million).</li> <li>• Design can accommodate large conferences, has a good mix of various sized meeting rooms for breakout sessions and includes basement car parks.</li> <li>• Large exhibition space of 10,000m<sup>2</sup> accessible at ground level off Hobson Street.</li> </ul>	<ul style="list-style-type: none"> <li>• Proposed that capital costs to SkyCity be recovered through certain concessions (including regulatory changes) from Government. All the proposed changes are likely to be controversial.</li> <li>• Assumes ability to agree lease of Hobson/Nelson Street land, including transfer of Television New Zealand sites.</li> </ul>
<b>The Edge,</b> Aotea Centre, CBD	<ul style="list-style-type: none"> <li>• Location has good proximity to a variety of accommodation options and other amenities (retail, restaurants and entertainment).</li> <li>• The land would be provided by Auckland city as its contribution.</li> <li>• Very easy to get to, very slight incline up Queen Street, and good public transport links. Approximately 20-25mins walk from Britomart Transport Centre.</li> <li>• Opportunity for a new architectural statement on an existing civic building.</li> <li>• 3 size options proposed with estimates ranging from \$260-\$324 million, all include restoring the St James Theatre.</li> </ul>	<ul style="list-style-type: none"> <li>• Although the design meets the space requirements it is not ideal e.g. exhibition space split over two levels (would not meet international expectations).</li> <li>• Keeping existing Aotea Theatre as part of the design would limit the numbers that the Centre could accommodate to 2,250 delegate conferences.</li> <li>• No offer of funding - although suggests that as existing centre is owned by the council, land would be made available at no charge.</li> <li>• Assumes existing management structure would operate new centre.</li> <li>• All options include the restoration of the St James Theatre which would be a significant additional cost (est. \$37.5 million).</li> </ul>
<b>Ngati Whatua,</b> Old Rail Yard, Quay Street	<ul style="list-style-type: none"> <li>• Site has ample space (adjacent Vector Arena, which seats up to 12,000, has potential to be used for very large conventions). A convention centre would be consistent with the vision for that area of town.</li> <li>• Urban regeneration opportunity of a neglected fringe area of the CBD. Could provide a 'bookend' for the Wynyard Quarter and wider waterfront developments.</li> </ul>	<ul style="list-style-type: none"> <li>• No adequate supply of hotel stock and other amenities in close proximity.</li> <li>• Although it is a flat walk for pedestrians from CBD to location – parts of the route are not sheltered from weather and there is no easy obvious pedestrian access to the site. Edge of site is also the main motorway off-ramp for the Port.</li> <li>• Construction may require significant engineering to build a platform over</li> </ul>

	<ul style="list-style-type: none"> <li>• Site terminates at motorway junction – good access for vehicles.</li> <li>• Potential for a 'Convention Centre Station' to be included in the design.</li> </ul>	<p>existing rail tracks on the site for the centre to be built on.</p> <ul style="list-style-type: none"> <li>• Assumes that Auckland City Council and Kiwirail will provide their surplus land at nil cost, an extra Council contribution of \$100 million, and government funding the remainder.</li> <li>• No suggestion of who will operate the centre once built.</li> </ul>
<b>Infratil, The Wynyard Quarter</b>	<ul style="list-style-type: none"> <li>• Large flat site - the convention centre could be built on one level, it would be close to the harbour, much of the land is already in Council ownership and it would add to the extensive redevelopment already in the vicinity.</li> <li>• Relatively close proximity to new Viaduct Events Centre and existing restaurants and entertainment options in the Viaduct harbour area.</li> <li>• Proposed PPP arrangement with Government.</li> <li>• Future potential light rail and harbour crossing links could improve access to the Quarter from the CBD.</li> </ul>	<ul style="list-style-type: none"> <li>• Did not fit well with the mixed-use development of residential and business that is planned for the Quarter.</li> <li>• Not supported by Waterfront Auckland who they felt that other potential uses of the site could work better with the overall design for the Quarter. Vehicle access into the area could also difficult and constrained as the current district plan limits vehicle access for the Quarter.</li> <li>• Although more hotels are planned for the area in the future, at this stage the development would be some distance from the majority of CBD hotel stock.</li> <li>• Would not be operated by Infratil and would require instalment of professional convention venue management operators.</li> <li>• No estimated costs in proposal.</li> </ul>
<b>ASB Showgrounds, Greenlane</b>	<ul style="list-style-type: none"> <li>• One of the best developed of the proposals. The draft concept drawings for the centre, with its proposed 'conch shell' design, showed how an easily accessible and significant building could be constructed on the site.</li> <li>• Cornwall Park Trustees were consulted and were supportive of the proposal.</li> <li>• Exhibition space which already exists onsite far exceeds space requirements for that component of the development.</li> <li>• Ample room for development of new centre and proposal includes new hotel incorporated into the design.</li> <li>• Proposed design is good and could accommodate very large conferences.</li> <li>• Total cost estimated at \$371 million, includes a 450 room hotel onsite.</li> <li>• Existing management structure would stay in place to operate new venue.</li> </ul>	<ul style="list-style-type: none"> <li>• Location - poor proximity to hotel stock, other amenities and the CBD (at least 15-20mins travel by taxi or bus from CBD).</li> <li>• Pedestrian access extremely difficult, Newmarket shopping district at least 35-40mins walk, which is inconsistent with international expectations and may limit its ability to attract international conferences.</li> <li>• Limited public transport access to the site (both now and planned) which would necessitate conference delegates being moved to and from the CBD via charter buses. Would be logistically difficult, not least because of the peak hour traffic flows on Greenlane West.</li> <li>• Proposal would require significant support from Government and/or other funders.</li> </ul>