

IN THE MATTER of the Gambling Act 2003

AND on an application by **SKYCITY CASINO MANAGEMENT LIMITED** and **QUEENSTOWN CASINOS LIMITED** to relinquish part of the premises at the Queenstown Casino

BEFORE THE GAMBLING COMMISSION

Members: L M Hansen
S C L Pearson
S Hughes KC
W A Acton
S T Shaw

Date of Application: 24 February 2023

Date of Decision: 5 May 2023

Date of Notification
of Decision: 31 May 2023

DECISION ON AN APPLICATION BY SKYCITY CASINO MANAGEMENT LIMITED AND QUEENSTOWN CASINOS LIMITED TO RELINQUISH PART OF THE PREMISES AT THE QUEENSTOWN CASINO

Application

1. Queenstown Casinos Limited (“**QCL**”) and SkyCity Casino Management Limited (“**SCML**”) (together “**SkyCity**”) applied to relinquish Level 1 of the Queenstown Casino. As part of this process, they made three related applications to the Commission, as follows:
 - (a) for approval of the terms of the relinquishment, pursuant to clause 2.6 of the Casino Venue Agreement;
 - (b) to vary licence conditions 4, 6 and 26 attached to the venue licence for the Queenstown Casino, and licence conditions 4, 13 and 43 attached SCML’s operator’s licence for the Queenstown Casino, pursuant to section 139(1)(d) of the Gambling Act 2003 (the “**Act**”); and
 - (c) to approve an amendment to the Casino Venue Agreement between QCL and SCML, pursuant to section 132(2) of the Act.
2. Section 140 of the Act provides that the Commission must notify the Secretary for Internal Affairs (the “**Secretary**”) and other potentially affected persons of any proposed licence condition change. The Commission notified the Secretary, Manatū Hauora – Ministry of

Health (“**MoH**”), Te Whatu Ora – Health New Zealand, Te Aka Whai Ora – Māori Health Authority, Te Pou Hauora Tūmatanui – Public Health Agency, Southern DHB, Queenstown Lakes District Council (“**QLDC**”), MoH, PGF Group (“**PGF**”), and the Salvation Army Oasis (“**SA**”).

3. When considering an application to amend a casino venue agreement pursuant to section 132 of the Act, the Commission must have regard to the suitability requirements for applicants and persons with significant influence as specified in section 124. The requirements refer to matters raised in reports provided by the Police and any government agency under section 125. The Commission made inquiries of the Police and the Secretary’s Department, the Department of Internal Affairs (“**DIA**”).
4. The Commission received general submissions from the Secretary, MoH, QLDC, PGF and SA pursuant to section 140 of the Act, together with reports from the Police and the DIA pursuant to section 125. SkyCity filed two submissions in reply, together with a letter from the Chair of SkyCity Entertainment Group Limited (“**SCEG**”), Julian Cook.

Licence conditions

5. The relevant licence conditions are set out below with SkyCity’s proposed variations shown in mark-up:

Venue licence

4. In these conditions:

...

Affected Area means that part of the casino venue outlined in green on the plan contained in Appendix A to these conditions.

...

6. The Licence Holder must obtain the approval of the Commission prior to:
 - (a) construction or design changes to Level 2 of the Casino Venue, including the Gambling Area;
 - (b) the construction or relocation outside the Gambling Area and within the Casino Venue (excluding the Affected Area) of bank facilities available to the public excluding ATMs, EFTPOS and like devices;
 - (c) the addition or alteration of signage relating to the casino business on the exterior of the Casino Venue or on or around the building within which it is located.

The process by which the Licence Holder may obtain approval for construction or design changes to Level 2 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.

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26. The Licence Holder shall allow the Commission or staff of the Commission Secretariat, or any other person authorised by the Commission, to enter and remain in any part of the Casino Venue (excluding the Affected Area) at any time for the purposes of his or her official duties under the Act.

Operator's licence

4. In these conditions:

Affected Area means that part of the casino venue outlined in green on the plan contained in Annex A to these conditions.

...

13. A maximum of one automatic teller machine is permitted in the Casino Venue outside the Gambling Area. For the purposes of this condition, the definition of Casino Venue does not include the Affected Area. Should any ATM be installed in the Affected Area, the licence holder shall be obliged to remove any ATM it has installed in the Casino Venue.

...

43. The Licence Holder shall allow the Commission or staff of the Commission Secretariat, or any other person authorised by the Commission, to enter and remain in any part of the Casino Venue (excluding the Affected Area) at any time for the purpose of his or her official duties under the Act.

Relevant sections of the Act

6. The relevant sections of the Act are set out below as follows:

124 Suitability requirements

- (1) A casino operator's licence must not be granted and a casino venue licence must not be renewed unless the Gambling Commission is satisfied that the applicant and persons with a significant influence are suitable.
- (2) In considering whether an applicant or person with a significant influence is suitable, the Gambling Commission must take into account the following matters:
- (a) the honesty of the applicant or person with a significant influence, including—
- (i) whether the applicant or person with a significant influence has been convicted of a relevant offence; and
 - (ii) whether the applicant or person with a significant influence has been disciplined by a professional body for ethical misconduct; and
 - (iii) whether the applicant or person with a significant influence has been disciplined in any way during previous involvement with a casino; and
 - (iv) any other matters raised in the Police report, and the report of any government agency to which the application is referred, provided under section 125; and
- (b) the financial position of the applicant or person with a significant influence, including—
- (i) whether the applicant or person with a significant influence has ever been adjudged bankrupt; and

- (ii) whether the applicant or person with a significant influence has been directly involved in the management of a company that went into receivership or liquidation; and
- (iii) whether the applicant or person with a significant influence has sufficient financial resources; and
- (iv) whether the applicant or person has been prohibited or disqualified from acting as a director or promoter of, or in any way, whether directly or indirectly, being concerned or taking part in the management of, a company under section 382, 383, or 385 of the Companies Act 1993; and
- (v) whether the applicant or person has been prohibited from acting as a director or directly or indirectly being concerned, or taking part, in the management of a company under section 299 of the Insolvency Act 2006; and
- (c) the business skills of the applicant or person with a significant influence, including—
 - (i) whether the applicant or person with a significant influence has sufficient business management experience; and
 - (ii) whether the applicant or person with a significant influence has sufficient experience in casino operation or the operation of similar ventures; and
 - (iii) whether the applicant or person with a significant influence has qualifications relevant to the operation of a casino; and
- (d) the management structure of the applicant, including—
 - (i) whether that structure is suitably arranged for effective compliance with this Act; and
 - (ii) the nature of all relevant interests in the financial and management structure of the applicant; and
 - (iii) whether all such interests encourage the applicant's effective compliance with the Act; and
- (e) any other matter the Gambling Commission considers relevant.

125 Gambling Commission must investigate application concerning casino licences

- (1) On receiving an application for a casino operator's licence or for renewal of a casino venue licence, or for approval of a proposed transferee or alienee of a casino licence, the Gambling Commission must investigate the applicant, the proposed transferee or alienee, and persons with a significant influence.
- (2) Without limiting subsection (1), the Gambling Commission—
 - (a) may require the applicant, the proposed transferee or alienee, and persons with a significant influence to consent to having their photograph and fingerprints taken; and
 - (b) may require the applicant, the proposed transferee or alienee, and persons with a significant influence to provide further information; and
 - (c) must refer a copy of the application, and any photographs, fingerprints, or other information obtained in the investigation, to the Police and any government agency (not including the Inland Revenue Department) that the Gambling Commission considers relevant.
- (3) The Police and any government agency to whom the application is referred must inquire into, and report to the Gambling Commission on, the applicant, the proposed transferee or alienee, and persons with a significant influence.

...

132 Approval of casino venue agreement

- (1) Casino licence holders who propose to enter into a casino venue agreement must apply to the Gambling Commission for approval of the agreement before entering into it.

- (2) A party to a casino venue agreement who seeks to amend that agreement must apply to the Gambling Commission for approval of the amendment before the amendment is made.
- (3) An application for approval under subsection (1) or subsection (2) must be on the relevant form.

133 Consideration of application

- (1) An application under section 132 for the approval of a casino venue agreement or of an amendment to a casino venue agreement must be considered by the Gambling Commission.
- (2) The Gambling Commission may require the applicant to provide a copy of the proposed agreement and any other relevant information to assist the Gambling Commission to consider the application.
- (3) In considering an application, the Gambling Commission must have regard to any suitability requirements specified in section 124 that the Gambling Commission considers relevant.
- (4) The Gambling Commission must not approve a casino venue agreement or an amendment to a casino venue agreement unless it is satisfied that the agreement is conducive to the conduct of responsible gambling in the casino.
- (5) A casino venue agreement expires according to its terms or when—
 - (a) a party to the casino venue agreement surrenders the party's casino licence; or
 - (b) the casino venue licence expires and is not renewed; or
 - (c) a casino licence of a party is cancelled; or
 - (d) the Gambling Commission approves a new casino venue agreement; or
 - (e) the casino venue agreement is entered into or amended without the approval of the Gambling Commission.

139 Conditions of casino licence

- (1) The Gambling Commission may specify the conditions of a casino licence or vary or revoke the conditions of a casino licence in the following circumstances:
 - (a) on granting a casino operator's licence:
 - (b) on renewing a casino venue licence:
 - (c) on approving a casino venue agreement or an amendment to it:
 - (d) on application by the holder of the casino licence:
 - (e) on its own initiative or on the request of the Secretary.
- (2) A condition of a casino licence specified under subsection (1)—
 - (a) must be consistent with this Act; and
 - (b) must contribute to achieving the purpose of this Act; and
 - (c) must contribute to the efficient and effective administration of this Act; and
 - (d) must not permit an increase in the opportunities for casino gambling; and
 - (e) may relate to any matter, including the matters specified in Schedule 1, within the confines of paragraphs (a) to (d).

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

- (1) The Gambling Commission must notify the holder of the relevant casino licence, the Secretary, and any other person who it considers is affected by a proposal to specify, vary, or revoke the conditions of a casino licence.

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

141 Minimum operating standards in casino licences

- (1) The Secretary may specify the minimum operating standards for the day-to-day operation of a casino, for inclusion in a casino licence, or vary or revoke those standards, in the following circumstances:
 - (a) on the grant of a casino operator's licence:
 - (b) on the renewal of a casino venue licence:
 - (c) on the approval of a casino venue agreement or an amendment to it:
 - (d) on application by the holder of a casino licence:
 - (e) on the Secretary's own initiative.
- (2) Minimum operating standards must relate to any matter concerning the day-to-day operation of a casino, including (but not limited to) some or all of the matters specified in Schedule 2.
- (3) Minimum operating standards, and any variation or revocation of those standards, are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

178 Gambling equipment must be kept in casino venue

- (1) Gambling equipment relating to the operation of a casino must be kept by the holder of the casino operator's licence in the casino venue.
- (2) The Secretary may, on application by the holder of a casino operator's licence,—
 - (a) exempt the licence holder from compliance with subsection (1) in respect of specified gambling equipment; and
 - (b) permit the licence holder to temporarily remove specified gambling equipment from the casino venue.
- (3) The Secretary may impose conditions on an exemption or permission under subsection (2) (for example, conditions relating to the security of the equipment or the period of its removal).

Submissions by SkyCity

- 7. QCL is the holder of a casino venue licence and leases from Trojan Holdings Limited (“Trojan”) the premises which constitute the casino venue, namely part of Level 1 and all of Level 2 of the building in which the casino is located.

8. The Licence and Lease both expire on 6 December 2025. QCL intends to apply for renewal of the Licence. If successful, the renewal would be for a period of 15 years. It is critical to QCL that the Lease is capable of being maintained throughout the period of any renewed licence term. Accordingly, QCL has negotiated a new lease with Trojan that it can renew until 6 December 2040 ("**New Lease**").
9. Since the Queenstown Casino opened, it has only ever operated from Level 2. Currently the space on Level 1 is subleased to retail tenants, with some space used to store casino equipment.
10. Level 1 is not critical to the operation of the Casino, and it is not envisaged that the casino operations would ever extend to Level 1. Accordingly, QCL sees no need to continue to lease this part of the casino venue and, if it is acceptable to the Commission, it would like to relinquish its occupation of Level 1 as soon as possible.
11. As a condition of granting the New Lease, Trojan has requested that QCL relinquish the current Lease now. The intention is that, subject to the Commission's approval, QCL will relinquish the Lease in its entirety (being for both Level 1 and Level 2), and contemporaneously enter into the New Lease for Level 2 only.
12. If approved, the absence of a lease over Level 1 will not adversely affect SCML's capacity as licensed casino operator to operate the casino.
13. In 2019, the Commission considered, and approved, an application by Otago Casinos Limited to vary licence conditions as the result of expiry and non-renewal of its lease over part of the Wharf casino venue. In contrast to the current application, the Wharf relinquishment was not voluntary, but there does not appear to be any reason in principle why applications relating to a voluntary relinquishment should not be approved.

Implications of Relinquishing Affected Area

Operational issues

14. None of the Affected Area represents a critical part of the casino's operations. QCL has sufficient space on Level 2 and in the area that it licenses in the Casino car park to securely store the gambling equipment currently stored on Level 1. It acknowledges that it would require an exemption from the Secretary, pursuant to section 178(2)(a) of the Act, to utilise the car park for storage, and intends to seek such an exemption when required. There may also be an option to licence storage area on Level 1 from Trojan on a short-term basis.

15. Several important conditions in the venue licence already exclude the Affected Area. For example, condition 5, which requires as built architectural plans of Level 2 only to be lodged with the Commission and the Secretary, and condition 6(a), which requires the approval of the Commission prior to construction or design changes to Level 2 only.
16. The loss of the Affected Area will not create operational difficulties for either QCL or SCML.

Casino Venue Agreement

17. Clause 2.6 of the casino venue agreement between QCL and SCML provides as follows:

2.6 Premises Lease.

The Owner (QCL) will not agree to remove or relinquish any part of the Premises from the Premises Lease without the prior approval of the Authority to the terms of such removal or relinquishment. The terms upon which the Owner agrees to remove or relinquish any part of the Premises must include provisions to ensure that any future use of that area is subject to any restrictions or requirements in (i) the Act (including regulations made under the Act), (ii) directions from or conditions imposed by the Authority from time to time under the Act, or (iii) the Licences, which remain applicable to that area.

18. QCL is required to obtain the Commission's approval to the terms of the relinquishment, including provisions to ensure that any future use of the Affected Area is subject to any restrictions or requirements set out in the Act, any related regulations, directions or conditions imposed by the Commission, and any casino venue and operator's licence conditions. These issues are now addressed.

Act

19. The Affected Area is not part of the designated Gambling Area and, as a result, is not subject to the age restriction that applies to the gambling areas of a casino. Trojan could not subsequently apply to designate the gambling area to include the Affected Area because such an application may only be made by the holder of the casino licence. No restrictions or requirements are needed to ensure that the future use of the Affected Area complies with the age restrictions applicable to casinos.
20. The Secretary may specify minimum operating standards ("**MOS**") pursuant to section 141 of the Act. MOS relate to any matter concerning the day-to-day operation of a casino. The MOS specify high level outcomes that casinos must satisfy and create obligations for Human Resources, Gaming, Cashiering, Security, Host Responsibility, International Business, Surveillance and Revenue Audit. The loss of the Affected Area will have no adverse impact on SCML's capacity to comply with MOS and no restrictions or requirements will be necessary to ensure that the future use of the Affected Area complies with MOS.

21. There is nothing in subpart 6 of the Act which would suggest that the loss of the Affected Area would frustrate a Gambling Inspector's duties. If QCL temporarily uses any part of the Affected Area to store gambling equipment, it will need to secure the right of Gambling Inspectors to enter that part of the Affected Area (and such a right can be expected to be a condition of any approval from the Secretary pursuant to section 178(2)(a) of the Act).

22. QCL has not identified any other issues under the Act or related regulations which might be relevant.

Directions or conditions imposed by the Commission

23. QCL has not identified any directions or conditions imposed by the Commission which might be relevant.

Licence Conditions

24. They propose variations to three licence conditions attached to QCL's venue licence (4, 6 and 26) and three conditions attached to SCML's operator's licence for the Queenstown Casino (4, 13 and 43). (The exact variations proposed are shown in mark-up in paragraph 5 above.)

25. The proposed variations are designed to restrict the regulatory jurisdiction and oversight to that part of the Casino Venue which will continue to be utilised for casino related purposes. No other areas appear to require any form of restriction to ensure the Affected Area's future use will be compliant.

Venue Agreement

26. The Venue Agreement currently defines the Premises Lease as "a deed of lease dated 7 October 2000 between the Owner (as current lessee) and Trojan Holdings Limited (as current lessor) relating to 1,427.3m² more or less of the second floor and 527.7m² more or less of the first floor of the building, as the same may be varied from time to time".

27. As Trojan requires QCL to relinquish the current Lease in order to enter into the New Lease, this definition will need to be varied to refer to the New Lease.

28. Pursuant to section 132(2) of the Act, a party to a casino venue agreement who seeks to amend that agreement must apply to the Commission for approval of the amendment before the amendment is made.

29. Pursuant to section 133(3) of the Act, the Commission must have regard to any suitability requirements specified in section 124 that the Commission considers relevant. The Commission has previously held that the honesty, financial position and business skills of

the applicant or person with a significant influence and the management structure of the applicant are all relevant to an application of this type.

30. QCL is the holder of the venue licence and SCML is the holder of the operator's licence for the Queenstown casino (hence the requirement for a casino venue agreement between the licence holders). There is provision under section 144 of the Act for the Secretary to apply to the Commission for an order that a casino licence be suspended or cancelled if the Secretary is satisfied about any of the concerns set out in that section, including the licence holder or an associated person being no longer suitable to hold the licence or to be an associated person having regard to the suitability requirements in section 124. The Commission has never had occasion to consider such an application in relation to either of the licence holders.
31. Each of the persons below has been approved by the DIA as an Associated Person in respect of SkyCity Entertainment Group (**SCEG**) and each has a significant influence on Queenstown Casino. As QCL and SCML are wholly owned subsidiaries of SCEG, associated persons of SCEG are also associated persons of QCL and SCML.
32. The names and dates that DIA approved them are as follows:
- | | |
|------------------|------------------|
| Michael Ahearne | 13 November 2017 |
| Jo Wong | 28 March 2017 |
| Claire Walker | 28 March 2017 |
| Julie Amey | 12 May 2022 |
| Michelle Baillie | 28 April 2014 |
| Jono Browne | 7 July 2015 |
| Nirupa George | 13 December 2021 |
| Callum Mallett | 24 February 2021 |
| Sue Suckling | 9 May 2011 |
| Julian Cook | 4 June 2021 |
| Chad Barton | 31 May 2021 |
| Silvana Schenone | 3 June 2021 |
| Kate Hughes | 6 September 2022 |
| Glenn Davis | 5 September 2022 |

33. As previously advised to the Commission and the DIA:
- (a) On 4 June 2021, SkyCity Adelaide Pty Limited ("**SCA**"), a wholly owned subsidiary of SCEG, was notified by the AUSTRAC Regulatory Operations Team that it had identified potential serious non-compliance by SCA with the Australian Anti-Money Laundering and Counter-Terrorism Financing Act 2006 ("**AML/CTF Act**") and Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1) and had therefore referred the matter to AUSTRAC's enforcement team. The potential serious non-compliance noted by AUSTRAC included concerns relating to ongoing customer due diligence, adopting and maintaining an anti-money

laundering and counter-terrorism financing programme in compliance with the AML/CTF Act. The investigation concluded with AUSTRAC filing Federal Court civil penalty proceedings against SCA on 7 December 2022. Resolution of the AUSTRAC civil proceedings could potentially take 1-2 years and SCA may be subject to a material financial penalty.

- (b) On 1 July 2022, SCEG and SCA were advised by Consumer and Business Services (“**CBS**”) (the South Australian gambling regulator) that the South Australian Liquor and Gambling Commissioner (“**Commissioner**”) had appointed the Honourable Brian Martin AO KC to undertake an independent review of SkyCity Adelaide in accordance with Part 3 of the Casino Act 1997.

In its media release dated 1 July 2022, CBS noted that it was commissioning an independent review of the casino operations in South Australia “in light of interstate inquiries into various casino operations” given “a number of the matters raised to date extend beyond any one organisation and point instead to broader systemic issues within the casino industry”. Mr Martin was asked to consider, amongst other things, whether SCA is a suitable person to continue to hold the casino licence in South Australia, whether SCEG is a suitable person to continue to be a close associate of SCA, and, if neither is a suitable person, what changes (if any) were required for that party to become a suitable person.

On 6 February 2023, CBS advised SCEG and SCA that Mr Martin had formed the view that, until the resolution of the aforementioned AUSTRAC civil penalty proceedings, it was not possible to reliably determine the question of suitability. On that basis, the Commissioner decided to put the independent review on hold until after the conclusion of the AUSTRAC proceedings.

The Commissioner also advised that he was considering his options regarding any action he should take while the independent review was on hold, including whether he would seek that SCA undertake any actions in the interim.

34. Neither QCL nor SCML has been required to give notice that any of the above persons has been involved in any of the matters identified by licence conditions, namely:

- (a) conviction for an offence involving dishonesty;
- (b) censure for disciplinary action by a professional body for acts including misconduct;
- (c) censure in any way in relation to a casino in another jurisdiction;
- (d) current investigation (other than routine or periodical inspections) by any government or statutory body;
- (e) bankruptcy, receivership or liquidation.

35. Both QCL and SCML have extensive experience in the casino industry in New Zealand, and the Commission has had numerous dealings with them and with a number of the persons with significant influence. This should provide the Commission with a sufficient basis to be satisfied about their honesty and business experience.
36. Pursuant to section 133(4) of the Act, the Commission must not approve a casino venue agreement, or an amendment to a casino venue agreement, unless it is satisfied that the agreement is conducive to the conduct of responsible gambling in the casino.
37. Section 3.3 of the Venue Agreement specifies, inter alia:

The Manager shall operate, manage and promote the Business in accordance with:

...

(b) the terms and conditions of the Operator's Licence;

...

(f) its responsible gambling, harm minimisation, anti-money laundering and other host responsibility obligations lawfully imposed by or under the Act or other legislation

38. The conditions attached to SCML's operator's licence for the Queenstown Casino require SCML to ensure that the casino is operated in compliance with the HRP, which addresses a range of matters set out in the conditions. The Commission is familiar with SCML's host responsibility practices, and the revisions to the Agreement are not inconsistent with the conduct of responsible gambling in the Casino.

Submissions by MoH

39. MoH submitted (in collaboration with Te Whatu Ora, Te Aka Whai Ora, and Te Pou Hauora Tūmatanui) as follows:
- (a) It has no objections to the Queenstown Casino relinquishing part of the venue because it is unlikely to have any impact on gambling or gambling harm. Similar changes were made for the Wharf Casino.
- (b) It noted the proposed variation to condition 13 in relation to ATMs. It appreciates that SkyCity has addressed the potential for an ATM to be installed in the Affected Area in the future, and that SkyCity would remove its own ATM from the Casino Venue if this happened.
- (c) However, if an ATM were to be installed in the Affected Area, it would be difficult, if not impossible, for SkyCity to monitor it for the purpose of preventing and minimising gambling harm. The ATM would essentially be no different to any other ATM which was external to the venue. It hoped that the slight inconvenience of a player going to an unmonitored and unrestricted ATM outside of the Casino would mean that they would more likely use the staff monitored cashier's cage instead.

Submissions by the Secretary

40. The Secretary submitted, in summary, as follows:
- (a) The loss of the Affected Area will not compromise the operation of the Casino and he has no objection to the application.
 - (b) Once control over Level 1 is relinquished, SkyCity may not be able to prevent an ATM from being placed there. He appreciates the Casino's undertaking to remove its own ATM if this occurs. If patrons must leave the Casino to access the ATM on Level 1, there would be a break in play which would give them an opportunity to reflect on their gambling.
 - (c) On the other hand, casino patrons are likely to use the ATM that is most convenient. The loss of an ATM from Level 2 would likely result in unsupervised access to cash on Level 1, reducing opportunities for SkyCity to intervene to prevent gambling harm. As a harm minimisation initiative, SkyCity is also piloting cameras at ATMs to monitor the number of withdrawals/declined withdrawals per patron, a change he supports in principle. On balance, he favours the continued supervision of withdrawals and recommends that the Commission rejects SkyCity's offer of removing the ATM from Level 2 if a new ATM is located on Level 1.
 - (d) The secure storage of gambling equipment outside the casino premises will require his approval under section 178(2)(a) of the Act.

Submissions by QLDC

41. It does not oppose the proposed changes. They will have no effect on the Casino's alcohol licence.

Submissions by SA

42. SA submitted, in summary, as follows:
- (a) It does not object to the relinquishment of Level 1 as it is not part of the Casino's Gambling Area.
 - (b) If an ATM is installed on Level 1, then SkyCity will relinquish its ATM on Level 2. It thanks SkyCity for highlighting this and for its proposal.
 - (c) It is a good harm minimisation measure for patrons to stop gambling and leave the premises to access additional funds, although it is unsure how many ATMs remain in the Casino.

- (d) It queries whether any host responsibility/harm minimisation measures have been considered around the location of an ATM just outside the Casino and, if not, whether any harm minimisation measures could be identified and utilised in this situation.

Submissions by PGF

43. PGF supported the proposal and was particularly pleased with the proposed revision to condition 13 relating to the ATM. However, as it may be difficult for SkyCity to monitor how often patrons access the ATM for their gambling, SkyCity should consider how the changes would allow it to ensure robust harm minimisation efforts.

DIA's response to section 125 request

44. It reported, in summary, as follows:
- (a) Its Gambling Group and its Anti-Money Laundering & Countering Financing of Terrorism Group are in contact with the Australian regulators and are following the developments of the AUSTRAC proceeding and the CBS investigation.
 - (b) It examined the named individuals and has no concerns regarding their suitability arising from the proceeding and investigation into SkyCity Adelaide. When the findings on these matters are available, they will be examined to see if there are implications for the operation of the SkyCity casinos in New Zealand. They will also be provided to the Commission.
 - (c) It draws the Commission's attention to information concerning one of SkyCity's directors, Chad Barton. Mr Barton was the Chief Financial Officer at The Star Entertainment Group Limited (from May 2014 to November 2019), the holding company for The Star Pty Ltd, the operator of Star Casino Sydney and Star Casino Gold Coast. The Secretary approved Mr Barton as an associated person on 16 April 2021.
 - (d) The Star Pty Ltd was the subject of an Inquiry under the Casino Control Act 1992 (NSW) that was published on 31 August 2022. The Inquiry found that both Star Entertainment and The Star Pty Ltd were not suitable to be concerned with the management and operation of a casino in New South Wales.
 - (e) Mr Barton held a senior management position at Star Entertainment for part of the period that was subject of the Inquiry and is mentioned several times in the published Review of The Star Pty Ltd. While the Review did not make any findings about Mr Barton's suitability, it was only found necessary to consider the suitability

of persons and entities who remained close associates at the conclusion of the Inquiry.

NZ Police response to section 125 request

45. The Police inquired into the named persons and identified no relevant matters to bring to the Commission's attention. The Police stated that the Commission will be notified if anything changes.

SkyCity's submissions in reply

46. In reply, SkyCity submitted, as follows:

- (a) A common theme in the submissions was the possible installation of an ATM on Level 1. Its initial proposal would allow patrons to withdraw cash in an unsupervised area on Level 1, which contrasts with the supervision that the current ATM receives on Level 2. It acknowledged this and noted the following:

- (i) as the use of cash in society continues to diminish, it is highly unlikely that an ATM will ever be installed on Level 1; and
- (ii) there are other areas within the building that houses the casino where an ATM could be installed outside of the casino venue. In some locations, these areas could be closer to the Gambling Area than parts of Level 1. These ATMs would not be subject to any casino licence conditions restricting their number or placement.

- (b) Nevertheless, it saw merit in the DIA's submission that the ATM on Level 2 should remain if another ATM were installed on Level 1, so that oversight of ATM withdrawals could continue. It proposed a further amendment to condition 13 of the operator's licence, as follows:

13. ~~The Licence Holder is permitted a~~ A maximum of one automatic teller machine ~~which shall be located in Level 2 of the Casino Venue outside the Gambling Area.~~

- (c) The effect of this amendment is that QCL would be limited to a single ATM on Level 2. While there would be no further restriction on ATMs being placed on Level 1, patrons would be more likely to use the ATM on Level 2 because of its proximity to the Gambling Area. This would lead to superior harm minimisation outcomes.

- (d) It shared the DIA's comments with Mr Barton and provided the following response:

Mr Barton resigned from The Star Entertainment Group in November 2019. Mr Barton was not called to give evidence during the review of The Star Pty Ltd by

Adam Bell SC or the review of the Queensland operations of The Star Entertainment Group by Robert Gotterson AO KC. The Bell Review and Gotterson Report of Star Entertainment's suitability to hold a gaming licence made no adverse findings in relation to Mr Barton's conduct while at that company. Both reviews have been concluded and no adverse finding or inference in respect of Mr Barton could be drawn from either report.

In addition, in December 2022 the Australian Securities and Investments Commission commenced civil penalty proceedings against a number of former Directors and Officers of Star Entertainment in relation to alleged contraventions of directors' and officers' duties associated with matters which were the subject of the Star Entertainment inquiries. Those proceedings do not name Mr Barton as a respondent or refer to him in any negative way.

Mr Barton is not mentioned in any adverse way in the proceedings commenced by AUSTRAC against Star Entertainment and did not have any direct responsibility for the AML function while he was employed by that company.

- (e) Mr Barton brings significant industry experience and expertise to his role as a director of SkyCity and all SkyCity directors go through a comprehensive due diligence process prior to their appointment. Mr Barton continues to enjoy the full confidence of the SkyCity Entertainment Group Board.
- (f) In addition, the Chair of SCEG, Mr Cook, wrote to the Commission, expressing strong personal support for Mr Barton and strong support from the whole SCEG Board. Mr Cook indicated that he had monitored the results of the Australian Inquiries closely and undertaken extensive discussions with Mr Barton in relation to the various issues raised; Mr Barton's role at Star did not include direct responsibility for the anti-money laundering function and he departed in 2019. Mr Cook had observed Mr Barton for two years at SCEG meetings and "can personally attest to his character, thoroughness, and proper standing with respect to how he undertakes his role at SCEG".

Analysis

- 47. SkyCity has applied to the Commission to relinquish its lease of part of Level 1 of the Queenstown casino, having never used it substantively for casino purposes. If successful, SkyCity intends to operate the Queenstown casino solely from Level 2 on the basis that the relinquishment of Level 1 would not raise any regulatory or operational issues.
- 48. In order to effect relinquishment of Level 1, SkyCity made three applications to the Commission, being for the Commission's approval of the terms of the relinquishment, pursuant to clause 2.6 of the Casino Venue Agreement, for amendment of a number of conditions attached to each of the venue and operator's licences for the Queenstown Casino, pursuant to section 139 of the Act, and for approval to vary the Casino Venue Agreement between QCL and SCML, pursuant to section 132 of the Act.

Approval of terms of relinquishment

49. QCL is required to obtain the Commission's approval to the terms of the relinquishment of the Level 1, pursuant to clause 2.6 of the Casino Venue Agreement. Clause 2.6 provides as follows:

The Owner will not agree to remove or relinquish any part of the Premises from the Premises Lease without the prior approval of the Authority to the terms of such removal or relinquishment. The terms upon which the Owner agrees to remove or relinquish any part of the Premises must include provisions to ensure that any future use of that area is subject to any restrictions or requirements in (i) the Act (including regulations made under the Act), (ii) directions from or conditions imposed by the Authority from time to time under the Act, or (iii) the Licences, which remain applicable to that area.

The Venue Agreement defines "Authority" to include the Gambling Commission. The Commission's predecessor body was the Casino Control Authority.

50. The purpose of the approval is to ensure that the future use of the Affected Area has been properly considered and addressed prior to its relinquishment, with any appropriate restrictions or controls put in place.
51. SkyCity submitted that relinquishment would not raise issues in relation to the Act, regulations, conditions or the Licences, and because the Affected Area is not part of the designated Gambling Area, it is not subject to the age restriction that applies to the gambling areas of casinos.
52. Level 1 has never formed part of the Casino's Gambling Area and, after relinquishment, it never will, but because it will continue to be part of the defined casino venue, despite SkyCity's lack of access and control, a number of additional issues need to be considered and addressed by the Commission.
53. The Commission agreed with SkyCity's analysis; Level 1 is not critical to the operation of Queenstown Casino and its relinquishment will not raise issues in relation to the Act, regulations, licences or conditions. SkyCity had identified and addressed possible issues that may arise in the future (exemptions from the Secretary under section 178 for storage, the future application of MOS under section 141 and the ability of Gambling Inspectors to enter any part of the Affected Area pursuant to Part 4, subpart 6 of the Act).
54. Both SkyCity and the DIA are familiar with these types of issues having already addressed them in relation to the Wharf Casino, and the Commission noted that the DIA, as regulator, raised no objection to SkyCity's relinquishment of Level 1. The Commission approved the terms of relinquishment, under clause 2.6 of the Casino Venue Agreement, as proposed.

Variation to casino licence conditions

55. SkyCity has proposed variations to licence conditions 4, 6 and 26 of QCL's venue licence, and conditions 4, 13 and 43 attached to SCML's operator's licence for the Queenstown casino. Because the address and description of the casino venue constitutes two distinct areas (Level 1 and Level 2), SkyCity proposed to define Level 1 as "Affected Area" in condition 4 to both licences, with conditions 6 and 26 of QCL's venue licence and condition 43 of SCML's operator's licence excluding the Affected Area as newly defined.
56. In defining the "Affected Area" in the manner proposed, SkyCity followed the approach outlined in a previous Commission decision, GC28/19. Doing so generated no submissions in opposition and raised no issues of regulatory concern for the Commission. The Commission varied conditions 4, 6 and 26 attached to QCL's venue licence, and conditions 4 and 43 attached to SCML's operator's licence, as proposed, pursuant section 139(1)(d) of the Act.
57. The only proposed licence condition amendment which received substantive submissions was condition 13 attached to SCML's operator's licence. Condition 13 relates to the casino's ATM and provides that a maximum of one automatic teller machine is permitted in the Casino Venue outside of the Gambling Area. At present, SkyCity's ATM is located on Level 2, just outside the casino's entrance.
58. With the relinquishment of Level 1, SkyCity will lose control of Level 1 meaning that additional ATMs could be installed there by third parties who are not subject to condition 13. SkyCity was alert to this possibility and initially proposed an amendment which would require it to remove its ATM from Level 2 if an ATM were installed on Level 1. SkyCity's original proposal was as follows:

A maximum of one automatic teller machine is permitted in the Casino Venue outside the Gambling Area. For the purposes of this condition, the definition of Casino Venue does not include the Affected Area. Should any ATM be installed in the Affected Area, the licence holder shall be obliged to remove any ATM it has installed in the Casino Venue.

59. The DIA made submissions on this proposal, concluding, on balance, that SkyCity should retain the ATM on Level 2 in order to enable better host responsibility oversight.
60. PGF, SA and MoH also made submissions on SkyCity's ATM proposal.
61. In reply, SkyCity considered it unlikely that a new ATM would be installed on Level 1 but could see merit in the DIA's suggestion. SkyCity proposed a further amendment to condition 13 to retain the ATM on Level 2, as follows:

The Licence Holder is permitted a A maximum of one automatic teller machine which shall be located ~~is permitted~~ in Level 2 of the Casino Venue outside the Gambling Area.

62. The Commission is aware of the association between cash access and potential patron harm, having received submissions on the subject as part of previous applications and proposals. Indeed, the Commission is currently undertaking a review of the cash access licence conditions for all casinos to see if those conditions remain appropriate for 2023 and beyond.
63. The overarching tenor of submissions on Queenstown casino's ATM was patron safety and whether this is best achieved by SkyCity removing the Level 2 ATM if an additional ATM is installed by a third party on Level 1, or whether it is preferable to retain the Level 2 ATM so that SkyCity can maintain host responsibility oversight. On balance, the Commission considered that it is the latter. As the Secretary alluded to, there is a degree of host responsibility pragmatism in locating an ATM on Level 2 because casino patrons will almost certainly utilise that machine rather than one located further away on Level 1. The benefit in doing so is that SkyCity can maintain oversight of the Level 2 ATM and continue with its camera trials.
64. The Commission amended condition 13 from that proposed by SkyCity to restore it more closely to the original drafting, as follows:

A maximum of one automatic teller machine is permitted in the Casino Venue outside the Gambling Area on Level 2. For the purposes of this condition, there is no restriction on the installation of automatic teller machines in the Affected Area so long as an automatic teller machine is installed on Level 2.

Approval of casino venue agreement

65. SkyCity has sought Commission approval of an amended casino venue agreement for the Queenstown Casino in order to reflect the relinquishment of Level 1. Licence Holders who enter into a casino venue agreement, or who seek to amend an existing agreement, must apply to the Commission for approval of the amendment pursuant to section 132(2) of the Act.
66. The process governing the Commission's consideration of such an application is set out in section 133 of the Act. Section 133 provides that:
- (a) the Commission may require a copy of the proposed venue agreement and any other relevant information to assist it in its consideration of the application;
 - (b) the Commission must have regard to any suitability requirements specified in section 124 of the Act that the Commission considers to be relevant; and
 - (c) the Commission must not approve a casino venue agreement unless it is satisfied that the agreement is conducive to the conduct of responsible gambling in the casino.

Venue Agreement

67. SkyCity provided the Commission with a copy of the venue agreement proposed for the Queenstown Casino. The proposed amendments were minor; to remove Level 1 from the definition of “Premises Lease” and to include the date of the new lease, as follows:

Premises Lease means a deed of lease dated ~~7 December 2000~~ between the Owner (as current lessee) and Trojan Holdings Limited (as current lessor) relating to 1,427.3m² more or less of the second floor ~~and 527.7m² more or less of the first floor~~ of the Building, as the same may be varied from time to time.

Suitability requirements

68. Section 124 requires the Commission to consider the suitability requirements specified.
69. The suitability requirements listed in section 124 apply in a variety of circumstances apart from applications to approve casino venue agreements and amendments to them. For example, an application for the grant of a new casino operator’s licence under section 130, and an application for renewal of a casino venue licence under section 135, both require the Commission to determine the suitability of the parties involved in terms of section 124.
70. Separately, under section 149 of the Act, the Secretary must not approve a person as an Associated Person unless he is satisfied that the person meets the suitability requirements specified in section 124.
71. The application of section 124 in relation to a proposed amendment of a venue agreement differs from its application to sections 130, 135 and 149. When considering an application for the approval of a venue agreement, section 133(3) of the Act provides that:

The Commission must have regard to any suitability requirements specified in section 124 that the Gambling Commission considers relevant. [emphasis added]

So, in contrast to the strict and absolute nature of their application in other cases, the Commission need not consider every matter identified by section 124, only those matters that it considers to be relevant to the application before it. In all other cases, the Secretary or the Commission must be satisfied that the appropriate people are suitable in terms of all of the requirements set out in section 124.

72. Section 124(2) provides that, when considering whether an applicant or person with a significant influence is suitable, the Commission can take into account the following matters:
- (a) the honesty of the applicant or person with a significant influence (including whether they have been convicted of a relevant offence, whether they have been disciplined by a professional body, whether they have been disciplined during previous

- involvement with a casino, and whether there are any other matters raised by the Police or other government agency);
- (b) the financial position of the applicant or person with a significant influence (including whether they have ever been adjudged bankrupt, whether they have been involved in the management of a company that has gone into receivership or liquidation, and whether they have sufficient financial resources);
 - (c) the business skills of the applicant or person with a significant influence (including whether they have sufficient business management experience, whether they have sufficient experience in operating a casino or similar venture, and whether they have qualifications relevant to operate a casino);
 - (d) the management structure of the applicant (including whether the structure is suitably arranged for effective compliance with the Gambling Act, the nature of all relevant interests in the financial and management structure of the applicant, and whether all such interests encourage effective compliance with the Act); and
 - (e) any other matter the Commission considers relevant.
73. In some earlier decisions (GC43/13, GC27/15 and GC04/16), the Commission indicated that all of the matters specified in section 124(2)(a)-(d) were relevant to applications for approval to amend a casino venue agreement. However, in its most recent decision, GC07/19, on the section 124(2) suitability requirements, the Commission concluded that the financial position of the applicants and persons of significant influence (section 124(2)(b)) was not a relevant consideration when considering an application to amend a previously approved casino venue agreement. The honesty and business skills of the Applicants and persons with significant influence, together with the management structure of the Applicants, are likely to be matters to take into account under section 124 when deciding whether to approve amendments to a casino venue agreement
74. As with decision GC07/19, the Commission did not consider that there was anything in the current application to suggest that the financial position of the Applicants and persons with a significant influence was material to SkyCity's application to amend a previously approved casino venue agreement. Accordingly, in reaching its decision, the Commission had regard to the matters specified in section 124(2)(a), (c) and (d) in respect of the Applicants and persons with a significant influence. The Commission did not identify any other matter of relevance under section 124(2)(e).

75. SkyCity submitted that the Applicants and persons with a significant influence meet the section 124(2) criteria in that:
- (a) the Commission has not had cause to consider any application by the Secretary to suspend or cancel the Licences under section 144 of the Act;
 - (b) each person with a significant influence has been approved by the Secretary as an Associated Person under section 149 of the Act;
 - (c) the Applicants have never been required to give notice that any of the persons with a significant influence have been involved in any of the matters specified by the “notification” licence conditions;
 - (d) the Licence Holders and their senior staff have extensive and relevant experience; and
 - (e) the Commission’s past dealings with them should leave it satisfied about their honesty and business experience.
76. The Commission does not take issue with the matters raised. SCML has been operating casinos in New Zealand for two decades and has operational responsibility for four of the country’s six casinos. The Commission’s past dealings with SCML and QCL do not leave it with questions about their honesty, business experience and management structure, or about the honesty and business experience of the persons with significant influence.
77. In its relinquishment application, SkyCity advised that civil proceedings had been commenced against SkyCity Adelaide by the Australian financial regulator, AUSTRAC, and that an investigation was underway by the South Australian gambling regulator, CBS, also in relation to SkyCity Adelaide. No submitter addressed those matters; even the DIA only did so in the report requested under section 125. The same report also notified another matter relating to one of SkyCity’s directors, Chad Barton, which had not been raised in submissions.
78. Notwithstanding the matters raised in the DIA report, the Commission is presently satisfied that, on the information before it, the Applicants and persons with significant influence are suitable under section 124 of the Act for the following reasons:
- (a) Both the AUSTRAC proceeding and the CBS investigation relate to SkyCity’s Adelaide operation, not the Queenstown Casino or SkyCity’s New Zealand operations. Although they allege potentially serious non-compliance with Australia’s AML/CFT requirements, no final determinations have been made in the AUSTRAC proceeding or the CBS investigation (which has been suspended

pending the outcome of the former). The currently available information does not cause the Commission to reach an adverse conclusion on suitability

- (b) Although the DIA reported that Mr Barton had previously held a role at Star Entertainment which had later been found by an Inquiry to be unsuitable to conduct the management and operation of a casino in NSW, the Commission considered the report of the Inquiry, including the references to Mr Barton, and concluded that the Inquiry had not reached any adverse conclusions about Mr Barton's conduct. Although the DIA had approved Mr Barton as an associated person in 2021, prior to the release of the Inquiry report, the Commission is not aware that it has taken any steps to revoke its approval.

79. The NZ Police report to the Commission raised no relevant matters affecting suitability.

Conducive to the conduct of responsible gambling in the casino

80. The Commission was satisfied that approving the venue agreement would be conducive to the conduct of responsible gambling at the Queenstown Casino. The Commission is very familiar with SCML's host responsibility practices, having reviewed and approved HRPs for all four SkyCity Casinos on numerous occasions, including having considered the most recent iterations in April 2023. The proposed variations to the agreement are not inconsistent with the conduct of responsible gambling in the Casino.

Decision

81. The Commission:

- (a) approved the terms of relinquishment of Level 1 of the Queenstown Casino in the manner proposed, pursuant to clause 2.6 of the Casino Venue Agreement between QCL and SCML;
- (b) varied licence conditions 4, 6 and 26 of QCL's venue licence, and licence conditions 4, 13 and 43 of SCML's operator's licence for the Queenstown Casino, pursuant to section 139(1)(d) of the Act. These licence conditions now provide as follows:

Venue licence

4. In these conditions:

...

Affected Area means that part of the casino venue outlined in green on the plan contained in Appendix A to these conditions.

...

6. The Licence Holder must obtain the approval of the Commission prior to:
- (a) construction or design changes to Level 2 of the Casino Venue, including the Gambling Area;
 - (b) the construction or relocation outside the Gambling Area and within the Casino Venue (excluding the Affected Area) of bank facilities available to the public excluding ATMs, EFTPOS and like devices;
 - (c) the addition or alteration of signage relating to the casino business on the exterior of the Casino Venue or on or around the building within which it is located.

The process by which the Licence Holder may obtain approval for construction or design changes to Level 2 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.

...

26. The Licence Holder shall allow the Commission or staff of the Commission Secretariat, or any other person authorised by the Commission, to enter and remain in any part of the Casino Venue (excluding the Affected Area) at any time for the purposes of his or her official duties under the Act.

Operator's licence

4. In these conditions:

Affected Area means that part of the casino venue outlined in green on the plan contained in Annex A to these conditions.

...

13. A maximum of one automatic teller machine is permitted in the Casino Venue outside the Gambling Area on Level 2. For the purposes of this condition, there is no restriction on the installation of automatic teller machines in the Affected Area so long as an automatic teller machine is installed on Level 2.

...

43. The Licence Holder shall allow the Commission or staff of the Commission Secretariat, or any other person authorised by the Commission, to enter and remain in any part of the Casino Venue (excluding the Affected Area) at any time for the purpose of his or her official duties under the Act.

- (c) approved the proposed variations to the Casino Venue Agreement between QCL and SCML, pursuant to section 132(2) of the Act.

Right of appeal

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



Lisa Hansen
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

31 May 2023

