

IN THE MATTER of the Gambling Act 2003

AND on applications by **SKYCITY CASINO MANAGEMENT LIMITED** for temporary approvals under condition 8 of its operator's licences for the Hamilton and Queenstown Casinos

BEFORE THE GAMBLING COMMISSION

Members: L M Hansen (Chief Gambling Commissioner)
D C Matahaere-Atariki
S C L Pearson

Date of Application: 26 January 2022

Date of Decision: 10 February 2022

Date of Notification
of Decision: 1 March 2022

**DECISION ON APPLICATIONS BY SKYCITY CASINO MANAGEMENT LIMITED
FOR TEMPORARY APPROVALS UNDER CONDITION 8 OF ITS OPERATOR'S LICENCES
FOR THE HAMILTON AND QUEENSTOWN CASINOS**

Introduction

1. SKYCITY Casino Management Limited ("**SCML**") applied to the Commission, under condition 8 of its operator's licences for the Hamilton and Queenstown Casinos, for approval to dispense, temporarily, with the requirement to have any gaming tables open at either of the two Casinos while they are operating subject to COVID-19 restrictions.
2. The relevant licence condition, which is identical for both venues, is as follows:

SCML operator's licence (Hamilton and Queenstown)

8. At least two table games shall be open for play when the Casino is operating, except where otherwise approved by the Authority or the Commission.

SCML's submissions

3. SCML submitted, in summary, as follows:
 - (a) In March 2020, SKYCITY's Casinos were temporarily closed following the Government's implementation of the COVID-19 Alert Level system. Before the Casinos reopened, it undertook a review of its operator's licence conditions in the

context of the challenges that it expected to face in the short to medium term, once operations could be safely resumed.

- (b) Accordingly, in April 2020, it applied to the Commission:
 - (i) to revoke condition 8 of SCML's operator's licences for the Auckland, Hamilton and Queenstown Casinos; and
 - (ii) pending a decision on this revocation application, for a temporary approval to dispense with the requirement to have any gaming tables open at the Hamilton and Queenstown Casinos.
- (c) The Commission granted the temporary approval in decision GC12/20. The approval was valid until "New Zealand leaves Alert level 1 or until the Commission determines SCML's application to revoke condition 8 of its operator's licences for the Auckland, Hamilton and Queenstown casinos."
- (d) The application to revoke condition 8 was subsequently withdrawn.
- (e) On 3 December 2021, the COVID-19 Alert Level system was replaced by the COVID-19 Protection Framework ("**CPF**"), meaning that New Zealand left Alert Level 1. This in turn meant that the approval granted in decision GC12/20 expired.
- (f) The application of the CPF and the continuation of the COVID-19 pandemic in New Zealand will have similar effects on its business to those that prompted its application which led to decision GC12/20.
- (g) Therefore, it again seeks temporary approval to dispense with the requirement to have any gaming tables open at Hamilton and Queenstown Casinos, until such time as COVID-19 restrictions are no longer in force.
- (h) Licence condition 8 for both Casinos requires that "at least two table games shall be open for play when the Casino[s are] operating, except where otherwise approved by the Authority or Commission". The Casino Control Authority ("**CCA**") previously granted an approval in respect of Queenstown Casino which removes the requirement to offer any table games for play until 6pm and requiring only one table to be available for play thereafter.
- (i) In decision GC23/11, the Commission exempted, under condition 8 of its operator's licence for the Hamilton Casino, the requirement to open more than one table game for play from 3am to 11am.
- (j) When the temporary approval was sought to dispense with the requirement to have any gaming tables open at Hamilton and Queenstown Casinos in April

2020, it anticipated reopening in an environment with lower customer demand arising from a softer market, and from the imposition of social distancing protocols. The ability to manage and revise the range of gaming products available would allow more flexibility and responsiveness to this environment.

- (k) On 23 January 2022, New Zealand moved to the Red traffic light setting of the CPF. This placed restrictions on the Hamilton and Queenstown Casinos that are broadly similar to those under Alert Level 2.
- (l) Until now, only the Auckland Casino has operated at the Red traffic light setting of the CPF. Auckland's experience is that customer demand under this setting is lower than it was at Level 2 of the Alert Level system. It expects that the same trend will follow at the Hamilton and Queenstown Casinos, especially as the move to Red is in response to the beginning of an outbreak of the Omicron variant, which is likely to have a significant impact on customer behaviour.
- (m) This application is being made in respect of Hamilton and Queenstown Casinos only; it does not seek any change for the Auckland Casino.
- (n) While it wants to maximise the number of table games it makes available to customers at each of its properties to satisfy demand, it does not want to deploy staff in this area unnecessarily. Removing the requirement to have a minimum number of gaming tables available for play while the Casino is operating will provide a greater level of operational flexibility to manage its operations during a period of market uncertainty.
- (o) The spread of COVID-19 in the community will result in people being required to isolate due to having tested positive for COVID-19, or because they are a household contact of a person who has tested positive. Overseas experience shows that such isolation requirements can result in large numbers of people being required to isolate, causing significant resourcing issues for businesses.
- (p) Given the small number of staff in Queenstown, it is foreseeable that there may be times when that Casino may not have any gaming table staff available to work. This could lead to the closure of the whole Casino if the operation of a table game was a licence requirement. Such a situation is a more remote possibility in Hamilton, however it cannot be discounted.
- (q) Isolation requirements are not linked to a specific traffic light setting and therefore may impact the business across all traffic light settings.
- (r) It again seeks temporary approval to dispense with the requirement to have any tables open for play while the Hamilton and Queenstown Casinos are operating,

until such time as COVID-19 restrictions are no longer in force in New Zealand. If a temporary approval is granted, to the extent that there may be any ambiguity as to the end date, it would be happy for the Commission to provide written notification that it considers such temporary approval has expired.

The Secretary's submissions

4. The Secretary advised that he had the following regulatory concerns with the application:
 - (a) Both Casinos would resemble a Class 4 venue as only EGMs would be operating.
 - (b) There would be a potential increase in harm because patrons would have no alternative to EGMs for gambling.
 - (c) It is well known that EGMs are more addictive than table games. SCML's own specialists have confirmed as much in their evidence in the hearing prior to decision GC16/20 (an application by SKYCITY to substitute EGMs for Black Jack tables at the Hamilton Casino).
 - (d) The makeup of the community in Hamilton, with a high Maori and Pacific Island population, increases the risk of harm arising from the removal of alternative gaming options.
 - (e) Linked and unlinked Jackpots can cause patrons to gamble for longer.
 - (f) In the near future, SCML may ask the Secretary to amend the game mix to allow the maximum number of EGMs at the Casino during the temporary period.

5. Expanding on those concerns, the Secretary submitted as follows:
 - (a) The removal of table games would, in effect, make the venues gaming rooms. That would be inconsistent with the statutory intent and meaning of a casino (a venue where both EGMs and table games operate). It would also conflict with the public's perception of the distinction between a casino and a gaming room.
 - (b) The application does not meet the statutory purpose of the Gambling Act 2003 ("the Act"), in particular s3(a – e), (h) or s139(2) in the light of the previous application by Hamilton Casino to substitute EGMs for Blackjack tables, and the subsequent Commission decision which recorded a preference by the public in Hamilton not to have EGMs at the forefront of the Casino's operations.
 - (c) Removing the gaming tables may result in an increase in harm. Fewer tables should result in fewer staff, and a consequent reduction in monitoring of gamblers by Casino staff.

- (d) Although SCML submitted that customer demand in Auckland reduced under the Red traffic light setting and social distancing protocols, and expressed concern that Hamilton and Queenstown might experience a similar reduction, SCML's current financial performance does not support such a premise.
- (e) Revoking condition 8 of the operator's licences may have adverse impacts on the community in relation to potential gambling harm.

SCML's submissions in reply

6. In reply, SCML submitted, in summary, as follows:

- (a) It was surprised to read the Secretary's submission. When it sought a temporary approval on very similar grounds in 2020, the Secretary made the following comments (as summarised by the Commission in decision GC12/20):

[W]hile the public may have an expectation that casino gambling in New Zealand means access to a range of gaming options, the Gambling Act does not require a casino to offer any particular form of gambling; either tables or gaming machines. Requiring a casino to staff a table when there is no demand serves no useful purpose.

The Secretary's submission accordingly represents an unexplained departure from his previously expressed views.

- (b) If New Zealand had not changed its COVID-19 response from the Alert Level system to the CPF system, the temporary approval from decision GC12/20 would continue to be in effect.
- (c) The original approval was sought to provide the Casinos with greater operational flexibility in an uncertain environment. The impact of the Omicron outbreak on the Casinos is significantly more uncertain than before. As it transpired, neither Hamilton nor Queenstown Casino acted in reliance on the temporary approval granted in decision GC12/20, with the requirements of condition 8 of their licences being met throughout the period of the temporary approval, reflecting its desire is to have tables open whenever there is demand.
- (d) While speculating that insufficient monitoring might take place as a result of the temporary approval sought, the Secretary failed to address the concern which SCML raised that isolation requirements may mean that insufficient staff are available to operate tables. In that event, without a temporary approval, the entire Casino might need to close. That would not be a fair or proportionate consequence of a staffing issue outside its control.
- (e) In respect of the specific concern raised by the Secretary, it takes its Host Responsibility obligations seriously. The temporary closure of tables, if staff availability were reduced, would allow better monitoring of customers rather than hindering monitoring.

- (f) It does not agree with the Secretary's submission in relation to the purpose of the Act. Condition 8 of the operator's licences for both Hamilton and Queenstown Casinos expressly provides for the Commission to authorise reduction or suspension of the standing condition 8 requirements periods. Such approvals have been granted in the past.
- (g) The Commission noted in decision GC12/20:
- In its previous decisions, the Commission held that there is nothing in the Gambling Act 2003 which requires casinos to deploy casino gaming tables or any other particular form of gambling product.
- (h) To be clear, it is seeking neither revocation of condition 8 for Hamilton or Queenstown Casinos, nor the removal of tables, as the Secretary seems to have assumed. It is merely seeking a temporary approval, similar to that given in decision GC12/20, to suspend the condition 8 requirements in the Hamilton and Queenstown Casinos.

Analysis

7. SCML has applied to the Commission for approval to dispense with the requirement to have any gaming tables open at the Hamilton and Queenstown Casinos when they are operating subject to COVID-19 restrictions. The application follows the effective termination, for purely technical reasons, arising from formal changes to the structure of Covid restrictions applying nationally, of an approval given by the Commission in decision GC12/20.
8. The approval given in decision GC12/20 was "...valid until New Zealand leaves Alert Level 1 or until the Commission determines SCML's [related] application to revoke condition 8 of its operator's licences for the Auckland, Hamilton and Queenstown casinos."
9. After SCML subsequently withdrew the related application, the approval would only terminate by reference to the application of the then prevailing Alert Levels. In December 2021, the COVID Alert Level system which applied at the time of decision GC12/20, was replaced by the equivalent CPF system. Because the technical change in the regulatory structure brought the approval to an end in its terms, SCML sought a replacement temporary approval to reflect the fact that similar Covid restrictions remained in place, albeit under a different structure.
10. In the circumstances, the Commission considers that the reasons for the temporary approval granted in decision GC12/20 remain applicable in all respects and nothing has been raised by the Secretary which causes it now to doubt that a replacement temporary authority should be granted.
11. The submissions for the Secretary represented a major departure from the views expressed in response to earlier similar applications. To be clear, the Commission has no expectation that the Secretary will not revise his views on matters of gambling regulation from time to time,

although in such cases it would be helpful if any change of view was acknowledged and explained fully.

12. However, in the Commission's view, the Secretary's submissions in opposition to this application did not substantively address the key issue identified above and appeared not to understand what was being sought, as the following indicates:

- (a) While the authorisation would permit table games not to be open during the period, it would not permit removal of any gaming tables. The physical appearance of the Casino would not be altered by the authorisation, although the staffing presence could be (to the extent that the authorisation was utilised, see below).
- (b) The Commission sees no reason to assume that the granting of a temporary authorisation would result in the Casinos not opening tables whenever demand for table games was apparent. The fact that the former temporary authorisation was never utilised suggests, to the contrary, that casinos are likely to close gaming tables only when there is clearly no demand or they are forced to do so by staffing problems.
- (c) While the application is for an authorisation provided for by the current conditions (and not for amendment of the conditions under section 139(2)), the Commission has regard to the Act's purpose when considering such applications. That said, it was not clear to the Commission how the statutory purpose was said to conflict with the temporary authorisation. The concerns about conflict appeared to arise from an erroneous assumption that the application was for permanent revocation of the condition, not a temporary suspension of the obligation during Covid restrictions, and on a misunderstanding of a recent Commission decision on relative harm.
- (d) The submissions advanced regarding the different harm effects of table games and EGMs do not accurately reflect either the evidence before the Commission or its conclusions in decision GC16/20, (especially in the case of the particular table game which was the subject of that application). The position is considerably more nuanced than suggested in the submissions.
- (e) The Commission could see no basis for the suggestion that a temporary authorisation not to have the tables required by condition 8 open would likely lead to amendments to the game mix and an increase the number of EGMs above the current limits. Any such amendments would require an application to the Commission, not the Secretary.

13. In case, contrary to the Commission's current expectations, the Secretary's staff become concerned about the appearance of adverse harm effects as a result of the utilisation of the temporary approval, the Commission intends to grant the approval sought subject to a qualification that would allow the Commission to review and amend the authorisation at any

time. Doing so would provide the Secretary with an opportunity to seek termination or amendment of the authorisation earlier than its expiry in its own terms if that were seen as desirable in the light of future developments.

Decision

14. For the reasons outlined above, the Commission approved, pursuant to condition 8 of SCML's operator's licences for the Hamilton and Queenstown Casinos, the application for approval to dispense, temporarily, with the requirement to have gaming tables open at the two Casinos for so long as the Casinos' operation is subject to COVID-19 restrictions. It is a term of the approval that the Commission may reconsider the approval and its terms at any time, including in the event of concerns arising from the utilisation of the approval during the period.

Right of appeal

15. 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

1 March 2022

