

IN THE MATTER of the Gambling Act 2003

AND on applications by **SKYCITY CASINO MANAGEMENT LIMITED, SKYCITY HAMILTON LIMITED, QUEENSTOWN CASINOS LIMITED** and **OTAGO CASINOS LIMITED** for approval to vary the casino venue agreements in place for the Hamilton, Queenstown and Wharf casinos

BEFORE THE GAMBLING COMMISSION

Members: G L Reeves (Chief Gambling Commissioner)
L M Hansen
W N Harvey
S C L Pearson

Date of Application: 9 January 2019

Date of Decision: 12 April 2019

Date of Notification
of Decision:  29 May 2019

DECISION ON APPLICATIONS BY SKYCITY CASINO MANAGEMENT LIMITED, SKYCITY HAMILTON LIMITED, QUEENSTOWN CASINOS LIMITED AND OTAGO CASINOS LIMITED FOR APPROVAL TO VARY THE CASINO VENUE AGREEMENTS IN PLACE FOR THE HAMILTON, QUEENSTOWN AND WHARF CASINOS

Introduction

1. SKYCITY Casino Management Limited ("**SCML**"), SKYCITY Hamilton Limited ("**SHL**"), Queenstown Casinos Limited ("**QCL**") and Otago Casinos Limited ("**OCL**") (together "**SKYCITY**" or "**Applicants**"), applied to the Commission, pursuant to section 132 of the Gambling Act 2003 (the "**Act**"), for approval to vary the casino venue agreements for each of the Hamilton, Queenstown and Wharf casinos.
2. The relevant sections of the Gambling Act 2003 ("**Act**") are as follows:

Gambling Act 2003

119 Requirements for casino gambling

A casino may be operated only by a person who holds a casino operator's licence—

- (a) if the casino gambling occurs at a place for which the person also holds a casino venue licence; or
- (b) if the casino operator has an approved casino venue agreement with another person who holds a casino venue licence.

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
 - (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.

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.

Licence conditions

3. The licence conditions attached to the casino venue and operator licences held by SCML, SHL, QCL and OCL are identical and require the Licence Holders to notify the Commission in relation to a number of matters, as follows:

- The Licence Holder shall notify the Commission and the Secretary in writing as soon as possible of any change in the state of affairs of the Licence Holder which has a significant bearing on the holding of the Casino [Operator's] licence, including any person ceasing to be an associated person of the Licence Holder.
- The Licence Holder, immediately on becoming aware of such an occurrence, shall notify the Commission and Secretary in writing if the Licence Holder or an associated person of the Licence Holder is involved in any:
 - (a) conviction for an offence involving dishonesty;
 - (b) censure or disciplinary action by a professional body for ethical 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 governmental or statutory body; and
- (e) bankruptcy, receivership or liquidation.

SKYCITY's submissions

4. SKYCITY submitted, in summary, as follows:

- (a) 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.
- (b) In decision GC43/13, the Commission approved a new casino venue agreement between SCML and OCL in respect of the Wharf Casino.
- (c) In decision GC27/15, the Commission approved a new casino venue agreement between SCML and SKYCITY Auckland Limited to make the Auckland Agreement consistent with the Wharf Agreement, and to incorporate an expansion to the Auckland casino venue.
- (d) The parties to the Auckland Agreement made a further application to amend the Auckland Agreement following a review of their banking arrangements. That application was approved in decision GC04/16. At that time, the Commission was advised that the parties to the Hamilton, Queenstown and Wharf casino venue agreements would consider making similar amendments to their own agreements, and that, in the case of the Hamilton and Queenstown casinos, the parties would also take the opportunity to modernise and simplify the agreements consistent with the approach adopted in the Wharf and Auckland Agreements.
- (e) The variations proposed by the current application will ensure a level of consistency in the agreements at each of the four SKYCITY casino properties.

Hamilton Agreement

- (f) The proposed changes to the Hamilton Agreement are modelled on those adopted in the Auckland Agreement approved by the Commission in 2015 and 2016.
- (g) 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 determined that the honesty, financial position and business skills of the applicant or person with a significant influence

and the management structure of the Applicants are all relevant to an application of this type.

- (h) SHL is the holder of the casino venue licence for the Hamilton casino and SCML is the holder of a casino operator's licence. 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 that any of the issues set out under that section have been satisfied. Neither SCML nor SHL has ever been subject to such an application and there has never been any suggestion from the Secretary that any other person with significant influence is no longer considered suitable to be an Associated Person.
- (i) Each of the persons below has been approved by the DIA as an Associated Person in respect of SKYCITY Entertainment Group Limited ("**SCEG**") and each has a significant influence on Hamilton Casino. As SHL and SCML are wholly owned subsidiaries of SCEG, Associated Persons of SCEG are also Associated Persons of SHL and SCML.
- (j) The names and dates that they were approved by DIA are as follows:
- | | |
|-------------------|------------------|
| Elizabeth McNally | 25 January 2018 |
| Michael Ahearne | 13 November 2017 |
| Rob Campbell | 14 June 2017 |
| Jo Wong | 28 March 2017 |
| Claire Walker | 28 March 2017 |
| Graeme Stephens | 28 February 2017 |
| Jennifer Owen | 15 November 2016 |
| Murray Jordan | 15 November 2016 |
| Rob Hamilton | 9 December 2014 |
| Michelle Baillie | 28 April 2014 |
| Richard Didsbury | 19 June 2012 |
| Sue Suckling | 9 May 2011 |
| Bruce Carter | 11 October 2010 |
- (k) Neither SHL nor SCML has ever been required to give notice that any of the above persons has been involved in any of the matters identified by the "notification" licence conditions, namely:
- (i) conviction for an offence involving dishonesty;
 - (ii) censure for disciplinary action by a professional body for acts including misconduct;
 - (iii) censure in any way in relation to a casino in another jurisdiction;
 - (iv) current investigation (other than routine or periodical inspections) by any government or statutory body);

- (v) bankruptcy, receivership or liquidation.
- (l) In addition, the Applicants have extensive relevant experience. SCML currently has operational responsibility for four of the six casinos in New Zealand, including SHL's Hamilton site. The Commission has had numerous dealings with the Applicants during this time and its own experience should provide a basis for satisfaction about the honesty and the business experience of the persons with significant influence.
- (m) 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.
- (n) Section 4.3 of the revised Hamilton 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;
 - (vi) Its responsible gambling, harm minimisation, anti-money laundering and other host responsibility obligations lawfully imposed by or under the Act or other legislation
- (o) The conditions specified in SCML's operator's licence in respect of the Hamilton Casino require SCML to ensure that the casino is operated in compliance with the Host Responsibility Programme ("HRP") which addresses a range of matters set out in the licence conditions. The Commission is familiar with SCML's host responsibility practices and the revisions to the Hamilton Agreement are consistent with the conduct of responsible gambling in the casino.

Queenstown Agreement

- (p) The proposed changes to the Queenstown Agreement are modelled on those adopted in the Auckland Agreement approved by the Commission in 2015 and 2016, and replicated in the proposed variations to the Hamilton Agreement.
- (q) The same considerations in relation to suitability requirements as set out in paragraph 4(h) apply to the proposed variations to the Queenstown Agreement. Neither QCL, as the holder of the casino venue licence, nor SCML, as the holder of a casino operator's licence, has ever been subject to an application pursuant to section 144 of the Act for an order that the casino licence(s) be suspended or cancelled. Nor has there been any suggestion from the Secretary that any other

person with significant influence in the Queenstown Casino is no longer considered suitable to be an Associated Person.

- (r) In addition to the Associated Persons identified above, there is one further person who has been approved as an Associated Person for SCEG and who has a significant influence on the Queenstown Casino. The General Manager of Queenstown Casino, Jonathon Browne, was approved as an Associated Person on 7 July 2015. Neither QCL nor SCML has ever been required to give notice that he or any of the persons identified in paragraph (j) above has been involved in any of the matters identified by licence conditions, namely:
- (i) conviction for an offence involving dishonesty;
 - (ii) censure for disciplinary action by a professional body for acts including misconduct;
 - (iii) censure in any way in relation to a casino in another jurisdiction;
 - (iv) current investigation (other than routine or periodical inspections) by any government or statutory body;
 - (v) bankruptcy, receivership or liquidation.
- (s) Both QCL and SCML have extensive experience in the casino industry in New Zealand. The Commission's own experience of dealing with both entities provides a basis for satisfaction about the honesty and the business experience of the persons with significant influence.
- (t) Section 3.3 of the revised Queenstown Agreement includes the identical clause to 4.3 of the revised Hamilton Agreement in relation to host responsibility.
- (u) The conditions specified in SCML's operator's licence in respect of 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 Queenstown Agreement are consistent with the conduct of responsible gambling in the casino.

Wharf Agreement

- (v) The proposed changes to the Wharf Agreement are modelled on those adopted in the variations to the Auckland Agreement approved by the Commission in 2016.
- (w) The same considerations in relation to suitability requirements as set out in paragraph 4(h) also apply to the proposed variations to the Wharf Agreement. Neither OCL as the holder of the casino venue licence nor SCML as the holder of

a casino operator's licence has ever been subject to an application pursuant to section 144 of the Act for an order that the casino licence(s) be suspended or cancelled. Nor has there been any suggestion from the Secretary that any other person with significant influence is no longer considered suitable to be an Associated Person.

- (x) The Associated Persons for Wharf Casino are the same as those for Queenstown Casino and neither OCL or SCML has ever been required to give notice that any of those Associated Persons has been involved in any of the matters identified by licence conditions, namely:
 - (i) conviction for an offence involving dishonesty;
 - (ii) censure for disciplinary action by a professional body for acts including misconduct;
 - (iii) censure in any way in relation to a casino in another jurisdiction;
 - (iv) current investigation (other than routine or periodical inspections) by any government or statutory body);
 - (v) bankruptcy, receivership or liquidation.
- (y) Both OCL and SCML have extensive experience in the casino industry in New Zealand. The Commission's own experience of dealing with both entities provides a basis for satisfaction about the honesty and the business experience of the persons with significant influence.
- (z) Section 3.3 of the revised Wharf Agreement includes an identical clause to 4.3 of the revised Hamilton Agreement and 3.3 of the revised Queenstown Agreement in relation to host responsibility.
- (aa) The conditions specified in SCML's operator's licence in respect of the Wharf 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 Wharf Agreement are consistent with the conduct of responsible gambling in the casino.

Secretary's submissions

5. The Secretary advised that he had no regulatory concerns with the application.

Analysis

6. SKYCITY has sought Commission approval of amended casino venue agreements for the Hamilton, Queenstown and Wharf casinos. SKYCITY sought the approval in order to update and align the agreements with the casino venue agreement in place for the Auckland casino.
7. Licence holders who enter into a casino venue agreement, or who seek to amend an existing casino agreement, must apply to the Commission for approval of the amendment pursuant to section 132 of the Act.
8. The process governing the Commission's consideration of such an application is set out in section 133. Section 133 provides that:
 - (a) the Gambling Commission may require SKYCITY to provide a copy of the proposed agreement;
 - (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 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.

Proposed venue agreements

9. SKYCITY provided the Commission with a copy of the venue agreements proposed for each of the Hamilton, Queenstown and Wharf casinos. The proposed agreements incorporated amendments previously approved by the Commission in the existing venue agreements for the Wharf and Auckland casinos.
10. The Commission agreed that it is sensible to update and modernise the agreements. The proposed amendments raised no issues of regulatory concern for the Commission, or for the Secretary.

Suitability requirements

11. In the present application, the Commission is required to have regard to such suitability requirements specified in section 124 as the Gambling Commission considers relevant.
12. 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, under section 135, on an application to renew a casino venue licence, the Commission must investigate the applicant and persons with significant influence and

determine their suitability in terms of section 124. 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.

13. However, the application of section 124 to the approval of venue agreements 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 in 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.

14. 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.

15. In previous decisions, the Commission has decided that all of the matters specified in section 124(2)(a), (b), (c) and (d) were relevant to applications for approval to amend a casino venue agreement (see decisions GC43/13, GC27/15 and GC04/16). However, on further reflection in the course of the current application, the Commission decided that the financial position of the applicant and persons of significant influence (section 124(2)(b)) is not a relevant requirement when considering an application to amend a previously approved casino venue agreement.
16. 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 relevant matters to take into account under section 124 when deciding whether to approve amendments to a casino venue agreement.
17. 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).
18. SKYCITY submitted that the Applicants and persons with a significant influence meet the section 124(2) criteria in that:
 - (a) none of the Applicants have ever been the subject of an application by the Secretary to suspend or cancel their licences under section 144 of the Act;
 - (b) each person with a significant influence at the three casinos 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 relevant experience; and
 - (e) the Commission's past dealings with them should leave it satisfied about their honesty and business experience.
19. The Commission agrees. SCML has been operating casinos in New Zealand and Australia for more than a decade, with SCML having operational responsibility for four of the six casinos in New Zealand. The Commission's past experience with SCML, SHL, QCL and OCL 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. The Secretary has previously approved each as an Associated Person, applying all of the requirements of section 124(2).

20. The Commission asked the NZ Police to provide any information of relevance on the persons with significant influence and SKYCITY. By letter dated 18 February 2019, the Police reported that there are no relevant issues that should be brought to the Commission's attention.
21. The Department of Internal Affairs (as a Government agency) similarly raised no issues of concern in relation to the Applicants or persons of significant influence.

Conducive to the conduct of responsible gambling in the casinos

22. The Commission is very familiar with SCML's host responsibility practices, having reviewed and approved HRPs for all four SKYCITY casinos on numerous occasions in the last decade. The Commission is satisfied that the proposed casino venue agreements are conducive to the conduct of responsible gambling at all three casinos.

Decision

23. The Commission approved, under section 132 of the Act, the proposed amendments to the casino venue agreements between SCML and SHL, SCML and QCL and SCML and OCL for the Hamilton, Queenstown and Wharf casinos.

Right of appeal

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

Graeme Reeves
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

29 May 2019

