

IN THE MATTER of the Gambling Act 2003
AND on an application by **SKYCITY CASINO MANAGEMENT LIMITED** for an approval under condition 8 of SCML's operator's licence for the Wharf casino

BEFORE THE GAMBLING COMMISSION

Members: G L Reeves (Chief Gambling Commissioner)
L M Hansen
R D Bell
D C Matahaere-Atariki
W N Harvey

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Date of Decision: 12 April 2018

Date of Notification of Decision: 1st May 2018

DECISION ON AN APPLICATION BY SKYCITY CASINO MANAGEMENT LIMITED FOR AN APPROVAL UNDER CONDITION 8 OF SCML'S OPERATOR'S LICENCE FOR THE WHARF CASINO

Introduction

1. SKYCITY Casino Management Limited ("**SCML**") applied to the Commission, under condition 8 of SCML's operator's licence for the Wharf casino, for approval "to relax the requirement to have at least one table game open for play from 5pm".
2. The Commission invited submissions from the Secretary for Internal Affairs (the "**Secretary**"), Ministry of Health ("**MoH**"), Problem Gambling Foundation ("**PGF**") and Salvation Army Oasis ("**SA**"), receiving received submissions from all. SCML provided submissions in reply.

Licence condition

3. The relevant licence condition is as follows:

SCML's operator's licence (Wharf)

8. When the Casino is operating, at least one table game shall be open for play from 5pm except where otherwise approved by the Commission.



Relevant sections of the Act

4. The relevant sections of the Gambling Act 2003 (the "Act") are as follows:

Gambling Act 2003

casino venue, in relation to a licensed casino,—

- (a) means the area defined as constituting the casino in the casino venue licence; and
- (b) includes any building or room in which games are conducted and played and in which money counting, surveillance, storage, and other activities related to the conduct and playing of games are carried on

30 Meaning of class 4 gambling

In this Act, class 4 gambling is gambling that satisfies the following criteria:

- (a) the net proceeds from the gambling are applied to, or distributed for, authorised purposes; and
- (b) either—
 - (i) no commission is paid to or received by a person for conducting the gambling; or
 - (ii) the only commission that is paid to or received by a person for conducting the gambling is a commission payment to a venue operator that complies with regulations made under section 371(1)(dd); and
- (c) there are game rules for the gambling; and
- (d) the gambling, and the conduct of the gambling, satisfies relevant game rules; and
- (e) either—
 - (i) the Secretary has categorised the gambling as class 4 gambling and not as another class of gambling; or
 - (ii) the gambling utilises or involves a gaming machine.

34. Meaning of casino gambling

In this Act, casino gambling—

- (a) means gambling—
 - (i) for which there are game rules; and
 - (ii) that satisfies those game rules; and
 - (iii) which is conducted in accordance with those game rules; and
 - (iv) to which both a casino venue licence and casino operator's licence apply; but
- (b) does not include gambling conducted by the New Zealand Racing Board referred to in section 120.

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.

SCML's submissions

5. SCML submitted, in summary, as follows:
- (a) SKYCITY Entertainment Group has been unable to secure a return on its investment following its purchase of Otago Casinos Limited in 2013. The lease is due to expire on the premises for the Wharf Casino in September 2019 and preliminary discussions with the landlord suggest that it will not be possible to agree terms for a renewal which will not further exacerbate the current difficulties.
 - (b) In this context, it has been reviewing the operation with a view to identifying cost savings which might alleviate its continuing losses.
 - (c) As from 1 April 2018, it will reduce the trading hours at the Wharf casino. It will open from 5pm (rather than the current 11am) and continue to close at 1am each day.
 - (d) In addition, it seeks Commission approval to relax the requirement to have at least one table game open for play from 5pm. The current requirement necessitates the rostering of three full-time staff members in circumstance where there is invariably insufficient demand for this form of gaming to meet the costs of making it available.
 - (e) It would like to have the flexibility to offer table games as and when required, and in response to anticipated demand that might be linked to special events in Queenstown.
 - (f) It understands that the original restriction requiring a table or tables to open for play during operating hours reflected a desire to distinguish a casino venue from a class 4 venue operating gaming machines. There are a range of other matters which distinguish casinos from class 4 venues including the standard of such facilities, the sophistication of surveillance operations, robust internal controls, the use of licensed staff members, and the level of regulatory oversight.
 - (g) In addition, it has been recognised for the comprehensive nature of its HRPs at the various casinos in which it operates.
 - (h) These issues aside, it is difficult to see how the current restriction contributes to achieving the purpose of the Act, and, in particular, preventing and minimising harm from gambling, including problem gambling.



- (i) Following discussions with its host responsibility team, it is satisfied that allowing it the discretion as to when, or if, it opens a table or tables would not have any adverse effect on the prevention and minimisation of harm. It would continue to diligently fulfil its host responsibility obligations regardless of what product was made available for wagering.
- (j) The removal of the current restriction will not solve all the current difficulties but will at least alleviate what it considers is an unnecessary cost pressure.

The Secretary's submissions

6. The Secretary submitted, in summary, as follows:

- (a) While there are no legislative provisions that would prevent SCML's proposal to amend condition 8, the provision of table games is strongly identified as part of the casino gambling experience. As the potential that table games will not be readily available at Wharf casino is contrary to public expectations, the Commission should consider consulting the Queenstown-Lakes District Council on this proposal.
- (b) It is recognised that requiring a table to be staffed when no patrons are interested in playing serves no useful purpose. However, Gambling Inspectors confirm that table games are actively played at Wharf casino, particularly in the evenings from Thursday to Saturday. Therefore the Commission should consider amending condition 8 to set a minimum number of hours per week that at least one table game is open for play.

PGF's submissions

7. PGF submitted, in summary, as follows:

- (a) SCML's proposal will result in EGMs being the only gambling option on the premises for periods of time.
- (b) The Act provides some implied description of what constitutes a "casino" where the casino schedules refer to "chips", "dealers", "tables", "ratio of tables to machines" etc. This language and the fact that the condition is already in the licence suggests for a casino to be a casino, when open, it must offer table games.
- (c) To vary the licence condition would be inconsistent with what constitutes a casino.



- (d) Research says that the more pokie machines there are, the more gambling harm there will be. In addition, 50% of gambling harm is still from pokie machines. The purpose of the Act is to minimise harm and this can be done by ensuring that the Wharf facility is more than a venue of pokie machines.
- (e) SCML draws a comparison between its operation and a Class 4 venue, suggesting that the host responsibility standards will be better than what is practised elsewhere in Queenstown, but bases this on the full reputation of the SCML business not on the conduct of the Wharf casino. SCML's request to have less staff on site could reduce its ability to meet the host responsibility standard and it should therefore be required to prove that it will not. SCML has no evidence of an effective standard of host responsibility for the Wharf casino.
- (f) In addition to the 86 machines in the neighbouring Queenstown casino, there are four trusts operating 90 machines spread over eight venues. Queenstown is therefore already well supplied with EGMs for the resident, visitor and international tourist population.
- (g) The machines operated by the Class 4 sector operate under conditions that enable 40% of spend to be returned to New Zealand community groups. The same cannot be said for SCML.
- (h) If the business proves it has recently undergone unexpected unfavourable trading conditions, SCML should surrender the casino licence and close the facility. To resort to surviving on pokie machines is counter to the argument for granting the casino licence in the first instance.
- (i) The Commission should ask for audited accounts to verify this "changed conditions" justification for the condition 8 variation.

SA's submissions

8. SA submitted, in summary, as follows:

- (a) The application to relax the requirement is understandable in respect of the venue's mounting financial difficulties.
- (b) It does, however, caution against the establishment of an EGM-only casino. SCML correctly notes that there are a range of features which distinguish casinos from Class 4 venues (other than the fact they offer alternatives to EGMs). However in light of evidence that SCML has in the past had issues regarding effective host responsibility (eg, abandoned children in carpark, loan sharking,



money laundering, etc), it remains unconvinced that this "point of difference" automatically confers a higher level of host responsibility practice.

- (c) Other SCML operations also have higher staffing levels to ensure effective host responsibility practice. Moreover, unlike Class 4 venues, the primary activity of casinos is explicitly gambling (rather than food, drink or other leisure activities). It is widely accepted that EGMs are the most harmful gambling product available, and offering EGMs without safer alternatives, in an environment where gambling is the primary activity, may increase the risk of gambling harm.
- (d) Any reduction of staff entailed by the removal of table games may result in a lower standard of host responsibility practice. If SCML's application is approved, the Commission should request an updated HRP detailing the number of staff to be available during opening hours, to ensure best practice. This will help to ensure that there are adequate staffing levels around the EGMs, as well as any tables that may be deployed in future. If the availability of table games is made flexible, then it is important that staffing capacity be adjusted in proportion to any changes made.
- (e) Finally, taking into account that the Queenstown casino is nearby, it is unsure that continuing operations at the Wharf casino would bring the Queenstown community any added benefits, particularly as an EGM-only venue. Class 4 venues are required to return at least 40 percent of gaming machine proceeds to the community. On these grounds, if SCML cannot meet the expense of maintaining a safe gambling environment at the Wharf location, it may want to consider surrendering its licence for the Wharf casino when it expires, and cease operations at the venue.

MoH's submissions

9. MoH submitted, in summary, as follows:

- (a) The main question posed by this proposal is whether the occasional availability of table games provides a sufficient basis to define the gambling occurring as "casino gambling" as defined in the Act. This is particularly the case as no guidance is provided as to when or how often table games will be provided.
- (b) The differences between casino gambling and Class 4 gambling are not overly clear from sections 30 and 34 of the Act. However, none of the factors mentioned by SCML (standard of facilities, surveillance etc) appear to be relevant. However, section 30(b) of the Act clearly seems to apply, given the



availability of EGMs. In fact, operating EGMs would appear to become the main purpose of the venue under this proposal.

- (c) The Secretary is best placed to determine whether the gambling taking place is Class 4 or casino gambling under the Act. However, rather than simply "relaxing" the condition to have table games from 1700 hours and leaving it as an operational decision, an alternative time should be proposed each day (or hours per week) for table games to be available.
- (d) While the most recent Mystery Shopper exercise showed an improvement in SCML's host responsibility, there is an increased level of harm associated with EGMs, given the risk of continuous gambling. It is therefore important that SCML consider the lack of direct oversight of EGMs compared to table games (eg the absence of a croupier) when assessing required staffing levels.

SCML's submissions in response

10. In response, SCML submitted, in summary, as follows:

The Secretary's submissions

- (a) As a matter of form, it is not seeking to amend a licence condition, as characterised by the Secretary, but rather it is requesting Commission approval for an arrangement which the current condition provides for.
- (b) While it has no specific objection to the range of organisations the Commission may consult with in determining whether to grant the approval sought, it is unclear how the Queenstown-Lakes District Council is affected by the proposal and consequently why its views on the matter should be sought. In this sense, it does not support what it considers an unnecessary broadening of the consultation process.
- (c) The condition in question was originally imposed by the Casino Control Authority ("CCA") under the auspices of the Casino Control Act 1990. Following a general review of the licence conditions in 2008, the PGF proposed amending this condition to require the casino to have at least one table open for play whenever it was operating but the Commission determined that there was no compelling reason to amend the condition at that time.
- (d) All casinos are subject to a condition which requires a table or tables to be open for play during certain operating hours. The conditions in respect of the Auckland, Hamilton, Christchurch and Queenstown casinos require two table



games to be open for play while the casinos are operating, while both the Dunedin and Wharf casinos only require a table to tables to be open during particular hours of operation. Although it has been unable to trace any formal record of the CCA's rationale for imposing such conditions on casino operators, it is believed to stem in part from a desire to distinguish a casino venue from a class 4 venue operating gaming machines by ensuring at least one table game would be open for play during some period of the operation. The concessions granted to Dunedin and Wharf Casinos which provide for those casinos to be operated without table games for certain periods no doubt reflect their size and the economic pressures of keeping a table open in circumstances where there is insufficient demand to meet the costs of providing that service.

- (e) It acknowledges that ensuring minimum levels of gaming may also have been consistent with the general objectives of the Casino Control Act and promoting the development of casinos in a manner consistent with the promotion of tourism, employment and economic development generally. However following the repeal of that legislation and the enacting of the Gambling Act (where the emphasis has moved to controlling the growth of gambling and facilitating responsible gambling), it is more difficult to reconcile the current requirements.
- (f) The Secretary says that the provision of table games is strongly identified as part of the casino gambling experience and that if they were not readily available that would be contrary to public expectations. In response, the unavailability of tables at Wharf Casino up until 5pm each day has not led to any public concern and any customers seeking a table game experience could be referred to the Queenstown casino which offers such games and is located less than 200 metres away.
- (g) It does not dispute the Secretary's contention that table games are actively played on occasion at Wharf casino. However, participation is sporadic and the games do not attract sufficient revenue to meet the costs of providing this service over the course of a financial year. In terms of the financial year to date (as at 18 February), EBITDA in respect of table gaming reflects a loss of \$1,921. Over the eight month period, there were four profitable months which were outweighed by the four months involving losses. The inconsistent demand for table gaming at Wharf casino means it is not practical to manage this activity in a manner which harnesses the profitable periods only.
- (h) It does not support the Secretary's proposal that the Commission should set a minimum number of hours per week that at least one table game should be open for play. In its view, it would be more consistent with the objects of the Act if the



casino licence conditions specified the casino gambling activities that may be undertaken during operating hours rather than seeking to impose any minimum requirements in this regard.

PGF's submissions

- (i) Contrary to what PGF asserts, casino gambling is defined, inter alia, in section 34 of the Act as meaning gambling:
- for which there are game rules; and
 - that satisfies those game rules; and
 - which is conducted in accordance with those game rules; and
 - to which both a casino venue licence and casino operator's licence apply.
- (j) There are specific rules which govern the operation of gaming machines, just as there are rules governing the operation of tables and other ancillary games like Keno. There is nothing in SCML's reading of the Act to suggest that there was ever any statutory intent for casinos to operate specific types of games or to ensure a minimum number of game types are available at particular times.
- (k) PGF suggests that gambling harm can be minimised by ensuring that the Wharf facility is more than a venue for Poker machines. In effect PGF appears to be arguing that having more gambling choices available is likely to be less harmful. Presumably that argument assumes that the availability of table games will encourage persons whose game of choice is gaming machines (which PGF submits may be more harmful) to play the alternative less harmful product. If that is a fair representation of PGF's argument, then SCML is unaware of any research to support it. SCML's experience as a casino operator has been that persons who prefer a particular game type generally stay with that game type, regardless of what else is available.
- (l) Having regard to the meaning of casino gambling and the objects of the Act, the approval sought is entirely consistent with the Act.
- (m) PGF argues that SCML has no evidence of an effective standard of host responsibility for the Wharf Casino. SCML disagrees. In the DIA initiated Mystery Shopper exercise reported in June 2017, it was said that the four SKYCITY casinos had made significant improvements and positive changes, not only to systems and processes, but also to culture and staff attitude towards helping those who display signs of harmful gambling. The Secretary further reported that of the three scenarios performed at Wharf casino, the casino's response in respect of two met DIA expectations and the third scenario could not

be completed because Wharf casino staff successfully encouraged the shopper to self-exclude. The Secretary reported that SKYCITY's results stand out as showing a high standard of gambling host responsibility.

- (n) In terms of the reduction in staffing, that is simply a function of the product offered. Table staff are inevitably focused on the behaviour of those gambling at the tables they oversee and any staffing reductions which flow from not opening those tables has no bearing on other aspects of the operation.
- (o) PGF makes reference to unexpected unfavourable trading conditions and suggests that audited accounts should be provided to the Commission to verify the "changed conditions" justifying the approval sought. With respect, this application makes no mention of such issues. It seeks a relaxation to the current requirement because there is insufficient demand to meet the costs of making a table game available – as stated in the application, it represents an unnecessary cost pressure which is having an adverse impact on the business.

SA's submissions

- (p) SA cautions against the establishment of an EGM only casino and while noting that there are a range of features which distinguish casinos from class 4 venue. It also questions the higher level of host responsibility practice in casinos as asserted in the application. It does so, on the basis that SCML has had issues in the past, such as abandoned children in carparks, loan sharking and money laundering. Be that as it may, there have been no such incidents in the small environs of the Wharf Casino and it questions what relevance they have to the current application.
- (q) Like PGF, SA asserts that offering EGMs only in the casino without safer alternatives may increase the risk of gambling harm. It cites no research to justify its views and as already noted, it is contrary to SCML's own experience.
- (r) Wharf Casino's HRPs have never addressed staffing levels and SCML would resist any proposals to specify the number of staff that should be available during a casino's operating hours, as has been suggested by SA. Regardless of what products are made available, it is SCML's responsibility to ensure it has adequate staff to satisfy its various obligations, including those of a responsible host.

MoH's submissions

- (s) MoH takes the view that the main question posed by the proposal is whether the occasional availability of table games is sufficient basis for defining the gambling



occurring as “casino gambling”. In terms of the meaning of casino gambling, as set out in section 34 of the Act, the answer must surely be yes. Casino gambling is not determined by the mix of games available, but by the requirement that the gambling offered complies with game rules and is conducted in accordance with the relevant casino licences. Casino gambling does not morph into class 4 gambling by virtue of the products it operates. A casino with the requisite licences is not required to offer table gaming to satisfy the statutory meaning of casino gambling. As previously submitted, there is nothing in the reading of the Act to suggest that there was even any statutory intent for casinos to operate specific types of games, or to ensure a minimum number of game types are available at particular times.

- (t) MoH also suggests that the reduction in staffing associated with the absence of any table offering will lead to an increased level of harm associated with the gaming machine operations. The logic here seems to be that staff members sitting idle at tables can continue to oversee the behaviour of those gambling on machines. Be that as it may, the lack of demand for table gaming should not, and does not, provide the platform for the responsible oversight of gaming machines. Regardless of what products are made available, it is the operator’s responsibility to ensure it has adequate staff to satisfy its various obligations as a responsible host.

Analysis

11. SCML applied, under condition 8 of its operator’s licence for the Wharf casino, for approval to relax the requirement to have at least one table game open for play from 5pm. SCML did not specify the precise parameters of the degree of relaxation sought. However, as it sought approval to offer table games as and when required, and in response to anticipated demand, the implication was that the degree of relaxation was such that there would be no requirement ever to have a table game open.
12. In its reply, SCML confirmed the scope of the application when it rejected submissions by the DIA and the MoH to specify further reduced hours of operation for Wharf’s gaming table, preferring instead for the licence condition to specify the gambling activities that *may* be undertaken at the casino.
13. Having regard to that clarification, the Commission approached the application on the basis that, if the approval sought were granted, it would be possible for SCML never to deploy table games at the Wharf casino, in substance removing the entire condition. The application would mean that if SCML considered that there was insufficient demand from

patrons for a table game to be opened, the Wharf casino could operate as an EGM-only casino.

14. As a result, the Commission noted that although the application was for an approval under condition 8, its net effect is the equivalent of an application to revoke condition 8 altogether. In that regard, the distinction between amendment of the condition (which included the possibility of relaxation) and the degree of relaxation sought was one of form rather than substance.
15. The Commission considered the relevant provisions of the Gambling Act. Section 34 defines casino gambling as follows:

34. Meaning of casino gambling

In this Act, casino gambling—

- (a) means gambling—
- (i) for which there are game rules; and
 - (ii) that satisfies those game rules; and
 - (iii) which is conducted in accordance with those game rules; and
 - (iv) to which both a casino venue licence and casino operator's licence apply; but
- (b) does not include gambling conducted by the New Zealand Racing Board referred to in section 120.

16. Section 119 of the Act sets out the requirements for casino gambling as follows:

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.

17. The Commission concurred with submissions made by SCML and the Secretary; namely that there is nothing in the Act which requires SCML to deploy a table game. Indeed, the Act does not require casino operators to offer either table games or gaming machines, or both of them together. All that is required to meet the Act's requirements for casino gambling is for there to be gambling for which there are game rules, and which satisfies those game rules, and which is conducted in accordance with those rules by a person with the appropriate casino licences.
18. While the provision of table games is not required by statute, only by practice in the form of historical imposition of licence conditions.
19. The Commission next considered licence condition 8, and its history. As noted by SCML, condition 8 originated from the Commission's predecessor organisation, the Casino Control Authority ("CCA"). In granting the licences for New Zealand's six casinos, the CCA appeared to have a policy of requiring table games to be open while the casinos

were open, and imposed that requirement by way of licence conditions. The purpose of the conditions appears to have been to distinguish casinos from class 4 venues, although it is not clear to the Commission when or how the CCA articulated that policy.

20. The equivalent of licence condition 8 requires the Auckland, Christchurch, Hamilton and Queenstown casinos to have at least two table games open for play while they are operating, while the Dunedin and Wharf casinos need only offer a table game during specified hours. For Wharf casino, the licence condition imposed by the CCA required the operator to offer a table game from 5pm.
21. The Commission considered condition 8 in 2008, during its general review of licence conditions for the Wharf casino. The Commission maintained the condition in its existing form and, in doing so, rejected a submission by PGF to extend the condition to match the Auckland, Christchurch, Hamilton and Queenstown casinos. Paragraph 3.15 of decision on the general review, decision GC02/08, noted that "The Commission does not consider there to be any compelling reason to amend the condition at this point in time."
22. The Commission next considered the implications of the application as a matter of policy, rather than as a matter of law.
23. Each of the consulted parties submitted various reasons for declining the application. The Commission identified the following reasons as providing arguable grounds for refusing the application:
 - (a) SCML's proposal could result in gaming tables never being deployed at the Wharf casino. This could result in EGMs only being deployed. While this is permissible legally, intuitively, it would be odd for a casino not to offer some regular form of table gambling.
 - (b) SKYCITY purchased the casino in 2013 with full knowledge of condition 8 and with full knowledge that the Wharf casino has never been particularly profitable.
 - (c) The Commission saw no compelling reason to amend condition 8 in 2008, and there is, arguably, no more compelling reason to permit a variation now.
 - (d) Allowing the application could result in SCML offering only the most harmful form of gambling without offering a less harmful alternative.
 - (e) The application is explicitly aimed at staff reduction, which could result in lower standards of monitoring for harm.



24. Conversely, there are arguments in favour of allowing the application, namely:
- (a) There is no legal requirement for a casino to offer either gaming machines or gaming tables, or both together.
 - (b) Even with its limited deployment of gaming tables, Wharf is undoubtedly considered to be a "casino" at present. The extended non-deployment of table games may not undermine that perception, particularly as the unemployed gaming tables will continue to remain onsite and visible.
 - (c) Although SCML's proposal could lead to gaming tables never being deployed at the Wharf casino, it is more likely than not that there will be some table game deployment at some stage.
 - (d) Although SCML's proposal could result in only the most harmful form of gambling being deployed, the number of gaming machines at Wharf will not increase beyond what is currently being deployed and no evidence of the likelihood of substitution has been offered.
 - (e) There is no evidence to suggest that there are any real issues with the host responsibility practices at the Wharf casino. SCML is required to meet its host responsibility obligations regardless of what gambling products are deployed and, to date, has always done so.
 - (f) Simply because the Wharf casino may not offer table games, the venue does not automatically become a class 4 venue. The rules for the operation of each are quite different.
25. Having considered both the legal and policy implications of the proposal, the Commission decided, on balance, to permit a relaxation in the requirement to offer a table game for play. The Act does not require a casino venue to offer table games and the Commission was satisfied that not doing so would not undermine the standard and nature of the venue, particularly as six gaming tables will remain visible and onsite, albeit mostly unused.
26. The Commission was also satisfied that the non-deployment of a table game was not inconsistent with the purposes of the Act, in particular preventing and minimising harm from problem gambling. Ultimately, SCML will be able to deploy even less gambling product than its current permitted minimum and, although that could result in only gaming machines being deployed, the number of gaming machines will not increase beyond their current level.



27. However, as it considered the application, the Commission noted the submissions made by SCML and the Secretary in relation to the nature of the application; the Secretary submitted that SCML was applying to amend condition 8, while SCML submitted that it was not, rather it was "requesting Commission approval for an arrangement which the current condition provides for." As noted in paragraphs 11-14 above, the distinction is one of form rather than substance as the net effect of the application, if granted, would be the same as condition 8 being revoked.
28. Although condition 8 provides a mechanism for a relaxation to the table game requirement, it is likely that this mechanism was intended to allow temporary or partial periods of relaxation, rather than a permanent and wholesale relaxation, as sought by SCML. The Commission considered that condition 7 of SCML's operator's licence for the Wharf casino provides a useful comparison. Condition 7 requires a 15:1 ratio of gaming machines to gaming tables and provides a mechanism to vary the ratio "where otherwise approved by the Commission." The Commission has provided a number of these approvals at various casinos for matters such as casino refurbishment or the relocation of gambling product. These approvals allowed temporary breaches in the ratio for some very practical changes, but the condition was not drafted to allow a permanent breach in the ratio. The Commission considers that the same is true for condition 8.
29. For this reason, the Commission is prepared only to approve a relaxation under condition 8 on a temporary, and not on a permanent, basis. The approved relaxation is for a 12 month period from the date of notification of this decision.
30. After 10 months of the approval being implemented, the DIA and SCML must report to the Commission on the effect of the temporary relaxation, outlining the hours and days when table games were in fact open and all positive and negative consequences of the reduced availability from the condition 8 obligation.
31. If SCML wants to pursue relaxation on a permanent basis, it must file an application to revoke condition 8, pursuant to sections 139 and 140 of the Act. The Commission will consult on the application in the usual manner and reach a decision in due course.
32. Provided that SCML files an application to revoke condition 8 within the 12 month timeframe, the temporary approval will continue in effect automatically beyond 12 months until the revocation application is determined.



Decision

33. The Commission approved, under condition 8 of SCML's operator's licence for the Wharf casino, SCML's application to relax the requirement to have at least one table game open for play from 5pm. The approval is granted subject to the following:
- (a) The approval is for a 12 month period from the date of notification.
 - (b) After 10 months of the approval being implemented, the DIA and SCML are to report to the Commission their observations on the approval.
 - (c) If SCML wants the relaxation of the entirety of the obligation to continue thereafter, it must make an application to revoke condition 8. Provided that SCML makes such an application before the expiry of the approved 12 month period, the temporary approval will continue in effect automatically until the revocation application is determined (or earlier direction of the Commission).



Graeme Reeves
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

1st May 2018



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