

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
W N Harvey
S C L Pearson

Date of Application: 21 April 2020

Date of Decision: 6 May 2020

Date of Notification
of Decision:  May 2020

**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 the Hamilton and Queenstown casinos.

Licence conditions

2. The 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) It is currently planning and assessing the logistics of reopening its casinos. The duration of the current closures remains uncertain and it is likely that, even after reopening, it will need to operate its casinos in a restrictive manner to enable social distancing protocols to be adhered to.
- (b) It expects to face a vastly different environment following the resumption of operations and, in the short to medium term, it will need to operate more flexibly in what is likely to be a softer and evolving market. In such an environment, it anticipates circumstances where it may need to adopt more restrictive operating hours in some, or all, parts of its casino properties and to manage and revise the range of products that it offers as social distancing protocols continue to develop and the dictates of the market change.
- (c) Unlike the Auckland casino, condition 8 of the operator's licences for the Hamilton and Queenstown casinos allows the Commission to provide some relief to the requirement to have two table games available for play while the casino is operating. Neither Hamilton nor Queenstown casino is required to operate two tables at all times, based on the terms of previous approvals granted by the Casino Control Authority and the Commission; the Casino Control Authority previously granted approval in respect of the Queenstown casino, removing the requirement to offer any table games for play until 6.00pm and requiring only one table game to be available for play thereafter. The Commission exempted SCML from the requirement to open more than one table game for play from 3.00am to 11.00am at the Hamilton casino.
- (d) In the context of the new operating environment, the current arrangements may still be too restrictive. While it wants to maximise the number of table games that it makes available to customers at each of its properties (in order to satisfy demand), it does not want to deploy staff unnecessarily. Removing the requirement to have a minimum number of tables available for play while the casino is operating would provide a greater level of operational flexibility during what is likely to be a period of market uncertainty.

- (e) Having regard to the Commission's reasoning in decisions GC11/19 and GC02/20, it would seem that the traditional requirement to have tables available while a casino is operating is based on the requirements of an earlier regulatory regime and there is nothing in the Gambling Act 2003 to support the continuation of such an obligation. In this context, it is currently seeking the revocation of this condition at the Auckland, Hamilton and Queenstown casinos.
- (f) Pending consideration of that application, it asks the Commission to grant temporary approvals to dispense with the requirement to have any tables open for play while the Hamilton and Queenstown casinos are operating. It seeks such approvals pursuant to condition 8 of its licence conditions from the time that the two properties resume operations and for the duration of Alert Levels 1 and 2.

The Secretary's submissions

- 4. The Secretary advised that, while the public may have an expectation that casino gambling in New Zealand means access to a range of gambling 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. He does not object to granting a temporary approval to permit SCML not to deploy any gaming tables at the Hamilton and Queenstown casinos.

Analysis

- 5. SCML applied to the Commission for an approval not to deploy gaming tables at the Hamilton and Queenstown casinos in anticipation of there being low demand for tables when the casinos are operating in a COVID-19 environment. SCML also filed a related application to revoke condition 8 from its operator's licences for the Auckland, Hamilton and Queenstown casinos, but asked the Commission to consider the temporary approval applications for the Hamilton and Queenstown casinos in advance of the application for permanent removal.
- 6. As with some recent decisions, the Commission has been asked to consider an application with some urgency and outside of its usual monthly meeting cycle owing to the extraordinary circumstances that exist with COVID-19. Because of these extraordinary circumstances, the Commission was prepared to do so.
- 7. The Commission also took the unusual step of notifying SCML of its decision by email and in advance of issuing a fully reasoned, written decision. The Commission did so because the value of determining the application quickly would have been undermined if the outcome of the application had not been relayed until a written decision was available.

8. However, as it also noted in the similar recent decisions, the Commission emphasises that the foregoing steps were taken solely in the light of the extraordinary circumstances that currently exist. The Commission's usual practice does not involve considering applications on an expedited basis outside of its usual monthly meeting cycle, nor advising applicants of the outcome of an application in advance of issuing a written decision. Its decision to do so in this and similar recent cases should not be taken as signaling a change in practice.
9. The purpose of this application is to allow SCML to dispense, temporarily, with the requirement to have any gaming tables open at the Hamilton and Queenstown casinos. Although both casinos already have approvals relaxing the requirements to have table games open when the casino is open, SCML sought temporary approvals suspending the requirement at both casinos pending the related application to revoke condition 8 at the Auckland, Hamilton and Queenstown casinos.
10. In the light of the extraordinary circumstances that currently exist with COVID-19, the Commission is prepared to grant the approvals sought. The approvals will remain in place until New Zealand leaves Alert Level 1 (but will be subject to the determination of SCML's application to revoke condition 8 permanently at three casinos).
11. In reaching this decision, the Commission noted as follows:
 - (a) The approvals are temporary. The Commission will revisit the approvals when it considers the applications to revoke condition 8.
 - (b) 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.
 - (c) The Secretary had no objections to SCML's application.
 - (d) Although the temporary approvals vary the current minimum table game requirements, this does not prevent SCML from opening table games for play. If there were demand from patrons to play table games, it would expect that SCML would meet that demand at both venues.

Decision

12. The Commission approved, under condition 8 of SCML's operator's licence for the Hamilton and Queenstown casinos, SCML's applications to dispense, temporarily, with the requirement to have any gaming tables open at the Hamilton and Queenstown casinos.

13. The temporary approvals are 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.

Right of appeal

14. 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

Lisa Hansen
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

20 May 2020

