

IN THE MATTER of the Gambling Act 2003

AND on applications by **SKYCITY AUCKLAND LIMITED, SKYCITY HAMILTON LIMITED, QUEENSTOWN CASINOS LIMITED and OTAGO CASINOS LIMITED** to amend licence condition 6 attached to the venue licences for the Auckland, Hamilton, Queenstown and Wharf casinos

BEFORE THE GAMBLING COMMISSION

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

Date of Application: 20 May 2015

Date of Decision: 10 July 2015

Date of Notification
of Decision: 17th July 2015

**DECISION ON APPLICATIONS BY SKYCITY AUCKLAND LIMITED,
SKYCITY HAMILTON LIMITED, QUEENSTOWN CASINOS LIMITED AND
OTAGO CASINOS LIMITED TO AMEND LICENCE CONDITION 6 ATTACHED TO
THE VENUE LICENCES FOR THE AUCKLAND, HAMILTON,
QUEENSTOWN AND WHARF CASINOS**

Introduction

1. SKYCITY Auckland Limited ("**SCAL**"), SKYCITY Hamilton Limited ("**SHL**"), Queenstown Casinos Limited ("**QCL**") and Otago Casino Limited ("**OCL**") (together referred to as the "**Applicants**") applied to the Commission for an identical variation to condition 6(c) of their respective venue licences, pursuant to section 139(1)(d) of the Gambling Act 2003 (the "**Act**").
2. The Applicants' proposal, if approved, would mean that Commission approval would be required only for display of gambling related signage on or around the Auckland, Hamilton, Queenstown and Wharf casinos. At present, Commission approval is required to display any signage at the casinos, regardless of whether that signage relates to gambling or non-gambling activities.

3. The Commission sought submissions on the proposal from the Secretary for Internal Affairs (the “**Secretary**”), CCL, DCML and PGF, receiving responses from the Secretary and CCL.

Relevant licence conditions

4. The relevant licence condition, with the proposed variations shown in mark-up, are as follows:

SKYCITY Auckland’s venue licence

6. The Licence Holder must obtain the approval of the Commission prior to:

- (a) ...
- (b) ...
- (c) the addition or alteration of signage relating to the gambling operations of the casino business on any building, road or structure within the block of land bounded by Hobson Street, Wellesley Street West, Federal Street and Victoria Street West, including the Casino Venue, Sky Tower, car park, bus terminal and walkways between the casino and the Sky Tower and the convention centre.

The process by which the Licence Holder may obtain approval for construction or design changes to Levels 1, 2, 3, 5 and 6 of the casino venue, including the Gambling Area (paragraph (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 gambling operations of the casino business on any building, road or structure within the casino block (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.

SKYCITY Hamilton’s venue licence

6. The Licence Holder must obtain the approval of the Commission prior to:

- (a) ...
- (b) ...
- (c) the addition or alteration of signage relating to the gambling operations of 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 Levels B1 and 1 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 gambling operations of 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.

SKYCITY Queenstown’s venue licence

6. The Licence Holder must obtain the approval of the Commission prior to:

- (a) ...
- (b) ...

- (c) the addition or alteration of signage relating to the gambling operations of 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 gambling operations of 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.

SKYCITY Wharf's venue licence

6. The Licence Holder must obtain the approval of the Commission prior to:

- (a) ...
 (b) ...
 (c) the addition or alteration of signage relating to the gambling operations of 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 the Casino Venue (paragraph (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 gambling operations of 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.

Relevant section of the Act

5. The relevant section of the Act is as follows:

Gambling Act 2003

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 purposes 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).

Submissions by the Applicants

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

- (a) Existing licence conditions for each of their venue licences presently require them to obtain Commission approval before displaying any signage on or around the casinos which relate to the “casino business”. The term “casino business” is not defined but has been interpreted broadly to include all on-site businesses of each casino, together with the various adjunct facilities. This means that signage relating to any aspect of the casino business requires Commission approval, including signage for food and beverage facilities, carparking, theatre performances, and bowling facilities.
- (b) In their view, licence conditions were not designed to provide oversight over these non-gambling matters, so they propose to narrow the circumstances in which prior approval of signage is necessary, with Commission approval required only for signage relating to the “gambling operations” of the casino (rather than for any signage related to “casino business”).
- (c) Signage relating to “casino business” is governed elsewhere, by the Fair Trading Act and Advertising Standards Codes. Also, they have appropriate processes in place to ensure that all signage complies with statutory obligations and responsible host requirements. As such, there is merit in narrowing the ambit of the current licence conditions. This would ensure that all gambling-related signage continues to be subject to a suitability assessment by the Commission, while other less contentious signage used widely by other sectors need not require prior approval.
- (d) The current licence conditions allow the Executive Director to approve the addition or alteration of signage if satisfied that the proposed changes will have no potentially adverse effects, otherwise the matter must be referred to the Commission for a decision on approval. This process has ensured a rapid response to all such applications and the current arrangements have not proved to be onerous. However, having said that, it is questionable whether the Commission has any direct interest in much of the signage they are currently required to submit for prior approval.
- (e) SHL will soon be embarking on some food and beverage developments outside the casino in the Atrium. As conditions stand, any signage related to those operations on or around the building within which they are located would require



the Commission's prior approval as the new facilities would relate to the "casino business".

The Secretary's submissions

7. The Secretary submitted that he has no regulatory concerns with the applications.

CCL's submissions

8. CCL submitted, in summary, as follows:
 - (a) It supports the Applicants' proposal. The Commission has determined a reasonable number of signage applications and it appears that all food and beverage applications have been approved with the approval process adding little value as the Commission is unlikely ever to be interested in regulating these signs. The Commission and the Executive Director have more important matters to consider.
 - (b) Approving the proposal would be consistent with section 139(2)(c) of the Act; namely that a licence condition "must contribute to the efficient and effective administration of the Act".
 - (c) If the Commission were to approve the Applicants' proposal, it could also amend the equivalent licence conditions for the other two casinos.

Analysis

9. The Applicants applied to vary licence condition 6 of the conditions attached to the venue licences for all four of its casinos, so that they need not submit non-gambling signage for approval before displaying that signage on or around their venues.
10. The Commission understood the rationale behind the applications but decided, on balance, that it should retain its oversight over all signage displayed on and around the casinos, for the following reasons.
11. The Applicants submitted that the Commission need only consider signs that relate to the "gambling operations" of each casino and need not consider non-gambling signage. They noted food and beverage, carparking and bowling alleys as particular examples of signage that is clearly not related to gambling. While, in theory, the Applicants' argument is grounded in common sense and logic, in reality, it is not always easy to categorise signage unambiguously as either "gambling" or "non-gambling". For example, a sign that simply stated "Skycity Restaurants" could be viewed as either gambling (as the word

“Skycity” is synonymous with gambling) or non-gambling (as the sign is directed at non-gambling venues, ie restaurants).

12. Further, there is always a degree of subjectivity when considering the appropriateness of signage to be displayed at a casino. For example, the Commission recently considered an application by SCAL to display signage at the Auckland casino. The application indicated that SCAL regarded the signage as completely uncontroversial, but it required quite careful consideration by the Commission before it was approved.
13. In circumstances such as these, the Commission’s view is that it is preferable that the Commission, as an independent decision making body, determines the appropriateness of all signage against the relevant criteria, rather than its consideration depending on the Licence Holder correctly categorising its signage (a process which raises the additional complication of what should occur if categorisation errors are made by the Licence Holder).
14. While it is true that many of the signs submitted for approval are uncontroversial and, with the benefit of hindsight, did not need be considered by the Commission or its Executive Director, it is possible that the reason that so many of the signs submitted for approval are uncontroversial is because the Applicants know that they will be subject to the Commission’s scrutiny. The Commission’s oversight may therefore serve the useful function of ensuring that the Licence Holder assesses all signage carefully before submitting it to the Commission for approval.
15. As the Applicants noted, the current approval process allows the Commission’s Executive Director to approve signage, pursuant to a delegated authority, if satisfied that it will have no potentially adverse effects. The Commission concurs with their observation that “This process has ensured a rapid response to all such applications and the current arrangements have not proved to be onerous.” Most signs are approved and returned to Applicants within a very short space of time – often within a matter of hours, if not minutes.
16. The Commission is satisfied that its current approach of maintaining an oversight (usually through the Executive Director) over all casino-related signage works very efficiently and is not in need of change. The minimal benefits of the proposed change would not outweigh the potential adverse consequences of ceasing to have general oversight (including the risk of breaches of its licence conditions by a Licence Holder mis-categorising signage).

Decision

17. The Commission declined the applications by SCAL, SHL, QCL and OCL to amend condition 6(c) of the venue licences for the Auckland, Hamilton, Queenstown and Wharf casinos, pursuant to section 139(2)(d) of the Act.

Right of appeal

6. 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

17 July 2015

