

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

BEFORE THE GAMBLING COMMISSION

Members: G L Reeves (Chief Gambling Commissioner)
P J Stanley
L M Hansen

Date of Application: 23 June 2011

Date of Decision: 15 July 2011

Date of Notification of Decision:  August 2011

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

Introduction

1. SKYCITY Casino Management Limited ("**SCML**") applied to the Commission, under licence condition 8 of its operator's licence for the Hamilton casino, for an exemption to the requirement to have at least two table games open for play when the casino is operating.
2. The Commission sought submissions on SCML's application from the Secretary for Internal Affairs (the "**Secretary**"), Hamilton Casino Liaison Group ("**HCLG**"), Problem Gambling Foundation ("**PGF**") and Gambling Watch ("**GW**"), receiving submissions from all parties.

Relevant licence condition and section of the Gambling Act 2003 (the "Act")

3. The relevant licence condition is as follows:

SCML operator's licence (Hamilton)

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.

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

172. Restricted hours of operation

- (1) A holder of a casino licence must not conduct casino gambling on Christmas Day, Good Friday, or on Anzac Day between the hours of 3 am and 1 pm.

SCML's submissions

5. SCML submitted, in summary, as follows:

- (a) The Hamilton casino currently operates for 24 hours only during weekends. On weekdays it closes at 3am (on Tuesday and Wednesday), and 5am (on Monday, Thursday and Friday), before re-opening at 9am.
- (b) It will move to a 24 hour operation, 7 days a week from 1 July 2011. The primary motivation for the change is to cater for demand from VIP Baccarat players. As this represents a relatively small group, it expects to be able to accommodate the demand by having only one table open for play. To have a further table open for play during the early hours is likely to represent an unnecessary cost to the business.
- (c) As a consequence it seeks Commission approval to have a minimum of one rather than two gaming tables open for play when the casino is operating from 3am to 11am Monday to Friday. There is sufficient demand during the weekend to have at least two tables open for play during these hours.
- (d) It currently has an exemption from offering any table games between 9am and 11am. The exemption was granted by the Casino Control Authority ("CCA") on 11 June 2003. The approval sought would replace the CCA exemption.
- (e) It is questionable whether a licence condition which establishes that a minimum number of gambling products that must be available during a casino's operating hours is consistent with the general purpose of the Act. In any event it is satisfied that having less product available for play during the periods in question will not have any adverse impact.

The Secretary's submissions

6. The Secretary has no regulatory concerns with the proposal.



GW's submissions

7. GW submitted, in summary, as follows:

- (a) It strongly opposes the application.
- (b) SCML has only recently gained approval to run Hamilton casino 24 hours per day, seven days per week. It would have been more honest for SCML to have declared its intention to become no more than a glorified, large pokie bar at the start of the licensing process.
- (c) Should the application be successful, SCML will seek further incremental changes.
- (d) The original casino application proposed that there would always be tables open at the same time as pokie machines. At that time no casino was legally allowed to open without having gaming tables operating.
- (e) Allowing SCML to run a giant pokie bar with 337 machines would provide a completely unfair commercial advantage over any other operator of pokie machines in the Waikato. The largest of them, Hamilton Workingmen's Club, is only allowed to run 30 pokie machines.
- (f) The *quid pro quo* for the casino being able to use the term "casino" was that it had to be more than a pokie bar, and offer a range of gambling activities. This application will enable them to sidestep the intent of the Act.
- (g) Pokie machines are widely acknowledged to cause greater harm from problem gambling than other forms of legal gambling in New Zealand. For the major gambling company in New Zealand to apply to only run the most damaging form of gambling activity, albeit for a limited period, is irresponsible and steps close to flouting the principles of the Act calling for harm from gambling to be minimised.
- (h) SCML's proposal is a cost-saving measure.

PGF's submissions

8. PGF submitted, in summary, as follows:

- (a) It totally opposes the casino being open 24 hours per day, seven days a week because it will increase the harm generated by casino gambling, including increasing problem gambling.

- (b) Gamblers gambling at the casino up until 3am (a relatively high proportion of whom are actual or potential problem gamblers) will often stay beyond that time, gambling through part or all of the early morning hours. They gamble substantially beyond their original intentions, and cause harm to themselves and their families.
- (c) Those gambling at that time are likely to be tired, sleep deprived or disoriented, and gamble beyond their discretionary funds or intended time duration. PGF therefore urges the Commission or the DIA to put on hold SCML's intention to open 24/7, if any regulatory instruments are available to them, until any effects that could be contrary to the purposes of the Act are evaluated.
- (d) It has no particular objection to the change in condition 8 to allow one of the tables to be closed for the period requested, or for longer periods, as it does not see such a provision as inconsistent with the terms of the Act. However, there must not be any increase in other gambling opportunities, eg no more pokie machines should be activated while this reduction in the number of table games applies.

HCLG's submissions

9. HCLG submitted, in summary, as follows:

- (a) It consulted with a number of community groups on SCML's proposal – they all agreed that any 24/7 operation of the casino would have a detrimental impact on the social services community.
- (b) Concern was also expressed at a recent ethnic forum held in Hamilton that the increase in operating hours would target Asian communities and have a detrimental effect on these users.
- (c) While the application does not indicate a major change to licence conditions, it is another cumulative change.
- (d) HCLG was initially set up out of a concern for the negative impact the casino would have on the community. As a result of this concern, a number of licence conditions were put in place around the casino's hours of operation, the dress standards of patrons, the number of tables operating at any one time (to balance pokie machine use) and the establishment of a harm minimisation policy. Over time, many of these conditions have been lessened.



- (e) There needs to be an ongoing oversight of the casino's harm minimisation policy and host responsibility obligations. An incident occurred where a gambler lost all his money and visited a service provider to have breakfast and to get a bus fare back to Auckland.
- (f) The exemption is being sought to operate a minimum of one table, rather than two, to cater for gamblers from outside of Hamilton. SCML's proposal is more likely to cater for problem gamblers, rather than a local gambler.
- (g) The casino licence was originally granted because Hamilton casino was going to be a boutique casino to stimulate tourism to Hamilton. This has not happened.
- (h) The majority of HCLG is strongly opposed to the casino operating 24/7. Gamblers gambling at the casino until 3am are likely to be actual or potential problem gamblers, who will gamble through part or all of the early morning hours and substantially beyond their original intentions, thereby causing harm to themselves and their families.
- (i) A change to condition 8 to allow one of the gaming tables to be closed for the period requested could encourage an increased use of pokie machines during this time. This is inconsistent with the principles of harm minimisation.
- (j) A change in hours would provide the casino with a competitive advantage, and could impact on the income and customer base for bars surrounding the casino.

SCML's submissions in reply

10. In reply, SCML submitted as follows:

- (a) PGF opposes SCML's decision to move to a 24 hour, seven day a week operation. There are no restrictions in the Act, its associated regulations or licence conditions which restrict a licence holder in this regard. It notes that PGF, however, has no objection to the proposal to have a minimum of one rather than two tables open for play during the period in question.
- (b) GW incorrectly asserts that it has only relatively recently gained approval to move to a 24 hour, seven day a week operation. No approval is actually necessary to conduct casino gambling 24/7.
- (c) GW appears to have misinterpreted the application as seeking approval to conduct gaming machine operations only over the period in question. It is actually seeking approval to have a minimum of one, rather than two, tables open for play,

on the basis that there may be occasions in the early hours where it can adequately accommodate demand for table play with a single table. As noted in its application, it proposes relinquishing an existing approval to operate gaming machines only between the hours of 9am and 11am in favour of operating a minimum of one table over a longer period.

- (d) A comparison of the casino with the Class 4 sector is misplaced, and opportunities to play gaming machines in the early hours will not change, irrespective of whether there are one or two tables open for play.
- (e) The suggestion that having only one table open for play could encourage increased use of gaming machines is highly unlikely. It is in SCML's interest to accommodate demand for table play and to the extent that it fails to do so, it is far more likely to lose that unsatisfied demand than see it transferred to another product. Frustrating customers who wish to play on a table is not a recipe for sustainable business, nor a means of converting those customers to gaming machine play.
- (f) The new arrangements are not designed to cater for the problem gambler, as HCLG suggests. There are a significant number of shift workers in the Hamilton area that it hopes will find the new hours more accommodating, and irrespective of what time customers choose to visit the casino or how long they stay, it will continue to apply its policy for identifying problem gamblers in accordance with the requirements of the Act. In this sense, it was disappointed by HCLG's reference to an alleged incident where a gambler lost money and visited a service provider to obtain a bus fare home to Auckland. The incident was not drawn to SCML's attention until well after it allegedly took place, and even then, insufficient details were provided to enable SCML to investigate or take any follow up action.

Analysis

Preliminary Issues

11. The submissions raised preliminary points that require clarification before the substantive application is addressed. First, GW, PGF and HCLG were all concerned about the Hamilton casino extending its hours of operation to 24 hours per day, seven days per week, with PGF urging the Commission or the DIA to prevent this from happening if it is within their powers to do so. Casinos are permitted by statute to operate 24 hours per day, seven days per week except for Christmas Day, Good Friday and part of Anzac Day (see section 172 of the Act). This was confirmed by the High Court following a declaratory proceeding brought by the Dunedin casino in December 2006 (see *Dunedin*

Casinos Ltd v The Gambling Commission & Anor HC Dunedin CIV 2006-412-000390 [19 December 2006]).

12. Secondly, GW submitted that the Hamilton Workingmen's Club operates 30 gaming machines. This is incorrect. Class 4 venues can operate a maximum of 18 gaming machines, which is precisely the number operating at the Hamilton Workingmen's Club.

Substantive Issues

13. The Commission considered that SCML's application raised the following issues:
- (a) Would the proposal increase opportunities for casino gambling?
 - (b) Would the proposal have negative harm minimisation implications?
 - (c) Would the proposal undermine the nature and standard of the Hamilton casino and/or blur the distinction between the casino and Class 4 venues?

Increase in opportunities for casino gambling

14. The Commission considered whether SCML's proposal would increase opportunities for casino gambling, such increases being prohibited by section 11 of the Act. The Commission considered it clear that the exemption sought would not do so. The proposal would affect only the minimum number of gaming tables required to be open. It would have no effect on what the casino is permitted to offer to patrons. The proposal could never increase casino gambling opportunities beyond what SCML is presently permitted to deploy.

Harm minimisation

15. The Commission did not consider that SCML's proposal would have negative harm minimisation implications. The concern expressed by GW and HCLG was that SCML's proposal could be harmful for some patrons because they would be forced to play gaming machines if only one gaming table was open and those patrons could not participate on that table. The Commission considered it highly unlikely that SCML would keep gaming tables closed for extended periods of time, thereby "forcing" patrons to play gaming machines in order to continue gambling. SCML is a commercial operation with its primary reason for existing being to offer gambling to the public. It is not in SCML's interests not to open gaming tables for play if there is patron demand to play them.
16. In any event, even if some table players do transfer their gambling from gaming tables to gaming machines, it does not automatically follow that those players will suffer harm by doing so. Many casino patrons play gaming machines quite unproblematically, and any

patrons that do exhibit signs of problem gambling from playing on them should be offered assistance by SCML's staff.

17. Finally, it is worth stating plainly that SCML is seeking an exemption from offering a minimum number of tables for play. The exemption does not compel SCML to close all tables but one; it simply means that SCML need not open more than one table from 3am to 11am. The exemption still allows SCML to open all of its gaming tables for play if there is sufficient customer demand.

Hamilton casino and Class 4 venues

18. GW submitted that the proposal would result in the Hamilton casino becoming a large pokie parlour, and provide it with a significant advantage over Class 4 venues in and around Hamilton. The Commission did not accept this submission.
19. As the Commission noted in decision GC09/07, there are a number of important distinctions between casinos and Class 4 venues including:
- (a) A casino's primary focus is to provide gambling facilities to the public. Gambling cannot be a Class 4 venue's primary activity – it must always be secondary to another activity.
 - (b) Casinos may offer table games for play, whereas Class 4 venues cannot.
 - (c) Gambling at Class 4 venues is limited to up to 18 gaming machines and a gaming room is often separated from the main activities at the venue. This is quite distinct from casinos where there are often large numbers of machines and tables, which are positioned centrally. As noted above, Hamilton casino can offer up to 23 tables and 339 machines.
 - (d) The purpose of Class 4 gambling is to raise funds for authorised charitable purposes. Casinos are not subject to this obligation.
20. The Commission concluded that SCML's proposal would not impact on these key distinguishing features, and was not persuaded by the submission that the change would result in the casino to become a large Class 4 venue.
21. The Commission was also not persuaded that the exemption would undermine the nature and standard of the Hamilton casino. At present SCML has an exemption from offering any table games for play from 9am to 11am. SCML's proposal will result in SCML offering at least one table for play for eight hours per day, with at least two tables being

open for the remaining 16 hours. If anything, SCML's proposal will enhance the nature and standard of the Hamilton casino when compared to the existing exemption.

Decision

22. The Commission exempted, under condition 8 of SCML's operator's licence, SCML from the requirement to open more than one table game for play from 3am to 11am at the Hamilton casino.



Graeme Reeves
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

1st

August 2011

