

**Notice of Meeting:**

I hereby give notice that an extraordinary Meeting of the Council will be held on:

**Date:** Tuesday 9 April 2019  
**Time:** 2.00pm  
**Meeting Room:** Council Chamber  
**Venue:** Municipal Building, Garden Place, Hamilton

Richard Briggs  
Chief Executive

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## Extraordinary Council OPEN AGENDA

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**Membership**

Chairperson	Mayor A King
Deputy Chairperson	Deputy Mayor M Gallagher
Members	Cr M Bunting
	Cr J R Casson
	Cr S Henry
	Cr D Macpherson
	Cr G Mallett
	Cr A O'Leary
	Cr R Pascoe
	Cr P Southgate
	Cr G Taylor
	Cr L Tooman
	Cr R Hamilton

**Quorum:** A majority of members (including vacancies)

**Meeting Frequency:** Monthly – or as required

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Lee-Ann Jordan  
Governance Manager

**5 April 2019**

Telephone: 07 838 6439  
Lee-Ann.Jordan@hcc.govt.nz  
www.hamilton.govt.nz

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# Council Report

Item 1

**Committee:** Council **Date:** 09 April 2019  
**Author:** Richard Briggs **Authoriser:** Richard Briggs  
**Position:** Chief Executive **Position:** Chief Executive  
**Report Name:** Proposed changes to Skycity submission process

<b>Report Status</b>	<i>Open</i>
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## Purpose

1. To seek approval from the Council to engage Tompkins Wake and appropriate Queens Counsel representation as well expert witnesses to create, manage and deliver a Council submission to the Gambling Commission concerning SKYCITY proposed changes to the Hamilton Casino's license.

## Recommendation

2. That the Council:
  - a) receive the report;
  - b) approves the engagement of Tompkins Wake and as appropriate Queens Counsel representation as well expert witnesses to create, manage and deliver a submission opposing the application by SKYCITY Hamilton to exchange three blackjack tables for sixty gaming machines and provide a reply and rebuttal submission on behalf of Hamilton City Council; and
  - c) approves the use of the Mayoral Office budget up to \$150,000 to fund all legal and expert costs.
3. On the 7th of February 2019 the Council approved a submission to oppose the on the proposal by SKYCITY Hamilton to exchange 3 blackjack tables for 60 'pokie machine' gaming machines. A copy of the 7 February 2019 Council report can be found [here](#).
4. The Mayor wants to test that the Council's position is still in opposition to the proposal.
5. Concern has been raised with the Mayor by retired District Court Judge David Wilson QC, that our submission alone, will not be enough to sway the Gambling Commission to dismiss the application.
6. Mr. Wilson has highlighted that this would be a landmark decision from the Gambling Commission and the issue needs to be robustly debated. The outlined risk is that should the application be approved, it creates a precedent that will make it difficult to decline applications in the future.
7. The Commission's own statement acknowledges that this is the first time the Commission has considered this type of application and that there is national interest on the issue.
8. The perspective laid out is that SKYCITY will have their lawyers and QCs representing them through the submission process offering rebuttal and reply, they will be wanting a positive decision not just for their Hamilton casino operations but for their other casino holdings.

9. SKYCITY have chosen the SKYCITY Hamilton casino to test this provision of the legislation. Hamilton has an opportunity to fight this to ensure that the Gambling Commission hears well-resourced arguments from both sides.
10. What the Mayor is proposing is that the delivery of a Council submission and Council's interests in the pending decision, are handled externally by Council's solicitors Tompkins Wake with Queens Counsel level representation (to be decided in conjunction with Tompkins wake).
11. The Chief Executive will ensure that the Council position and values are well understood by the instructing lawyers, so there is no ambiguity.
12. A budget of \$150,000 is asked for by the Mayor to engage Tompkins Wake, external legal counsel and expert witness to provide evidence for the Council submission. The Mayor is proposing that the Mayoral office budget be used to engage these services.
13. It is the Mayor's view that the Council is the only organization that can provide adequate resources to challenge the application. The Council does have a social responsibility to minimise social harm and it is the Mayor's belief that we should be taking all measures to ensure the Gambling Commission dismisses the application from SKYCITY.
14. Staff have not assessed the matter addressed in this report under the Significance and Engagement Policy as it will be subject to a national consultation process including hearings conducted by the Gambling Commission.

## **Attachments**

Attachment 1 - 22 March 2019 - Letter from Gambling Commission

Attachment 2 - NOTICE OF APPLICATION TO THE GAMBLING COMMISSION BY SKYCITY IN RELATION TO CHANGES PROPOSED TO THE HAMILTON CASINO

Attachment 3 - HCCs Draft 1 Submission - APPLICATION TO AMEND LICENCE CONDITIONS – SKYCITY Hamilton Casino (19 Feb 2019)

22 March 2019

Dear All

**APPLICATION BY SKYCITY TO SUBSTITUTE GAMING MACHINES FOR GAMING TABLES AT THE HAMILTON CASINO**

1. By letter dated 10 December 2018, the Gambling Commission received an application from SKYCITY to deploy 60 extra gaming machines at the Hamilton casino, in exchange for removing three Blackjack tables. The Commission sought submissions on the application from a number of interested parties, with the intention of considering SKYCITY's application on the papers.
2. Following requests from some interested parties, the Commission decided to broaden the scope of its consultation and to hold a public hearing as part of its process to determine the application. The Commission communicated this to a number of parties by letter dated 7 February 2019.
3. In that letter, the Commission also stated that it would issue public notices and additional invitations to participate in this application and in doing so, it would outline the process that the Commission intends to follow.
4. The Commission has now determined how it will advance this matter to a public hearing and has set out details in the **attached** Public Notice. Amongst other things, the Public Notice sets out details for the filing of submissions and how interested parties may apply to appear and be heard at the public hearing.
5. The Public Notice does not provide a date for the Public Hearing; that will be determined once submissions have been filed and decisions have been made on who can appear at the hearing.
6. The Public Notice will be published in the *Waikato Times* on Wednesday 27 March 2019 and on Saturday 30 March 2019, so that SKYCITY's application will be brought to the attention of the wider Hamilton and Waikato communities. The Commission may also undertake additional publications, but this has yet to be determined.
7. The Commission has dedicated part of its website to this application ([www.gamblingcommission.govt.nz/gcwebsite.nsf/wpg\\_URL/Casino-Licence-Conditions-Application-by-Skycity-to-substitute-gaming-machines-for-gaming-tables-at-the-Hamilton-casino!OpenDocument](http://www.gamblingcommission.govt.nz/gcwebsite.nsf/wpg_URL/Casino-Licence-Conditions-Application-by-Skycity-to-substitute-gaming-machines-for-gaming-tables-at-the-Hamilton-casino!OpenDocument)). It has uploaded SKYCITY's application (and the appendices to

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Level 2, 41 Bath Street  
Parnell, Auckland 1052, New Zealand  
PO Box 137295  
Parnell, Auckland 1052, New Zealand

Telephone: +64 9 353 7223  
[www.gamblingcom.govt.nz](http://www.gamblingcom.govt.nz)

that application), the relevant sections of the Gambling Act 2003 and the Public Notice. Further, documents will be uploaded as they are filed.

8. Please contact the Commission if you have any queries.

Yours sincerely,



**Blair Cairncross**  
Executive Director Gambling Commission  
Tel: 09-353 7222  
blair.cairncross@gamblingcom.govt.nz

Attachment 1

Item 1

**NOTICE OF APPLICATION TO THE GAMBLING COMMISSION BY  
SKYCITY IN RELATION TO CHANGES PROPOSED TO THE HAMILTON CASINO**

**Item 1**

**Introduction**

The Gambling Commission has received an application from SKYCITY Casino Management Limited (“**SCML**”) and SKYCITY Hamilton Limited (“**SHL**”) (together referred to as “**SKYCITY**”) proposing a number of changes to the Hamilton casino licence conditions. SKYCITY is seeking to deploy 60 additional gaming machines in substitution for three Black Jack tables and has filed four related applications with the Commission to enable it to do so.

The specific applications are as follows:

- (a) an application under section 139 of the Gambling Act 2003 (the “**Act**”) to vary licence conditions 5 and 6 attached to SCML’s operator’s licence for the Hamilton casino, and to revoke condition 7. If approved, the changes will:
  - (i) increase the number of gaming machines from 339 to 399 (condition 5);
  - (ii) decrease the number of gaming tables from 23 to 20 (condition 6); and
  - (iii) remove the requirement that the ratio of gaming machines to gaming tables in the Gambling Area should not exceed 15 to 1, except with the approval of the Commission (condition 7);
- (b) an application, pursuant to condition 9 of SCML’s operator’s licence for the Hamilton casino, for approval of a new game mix Annex; and
- (c) an application, pursuant to conditions 6 and 7 of SHL’s venue licence for approval of related construction and design changes to the Hamilton casino;
- (d) an application, pursuant to condition 12 of SCML’s operator’s licence for the Hamilton casino, for approval of a new floor plan.

Licence conditions for the Hamilton casino are available from the Commission’s website ([http://www.gamblingcommission.govt.nz/GCwebsite.nsf/Files/LicenceHamiltonOperator's/\\$file/LicenceHamiltonOperator's.pdf](http://www.gamblingcommission.govt.nz/GCwebsite.nsf/Files/LicenceHamiltonOperator's/$file/LicenceHamiltonOperator's.pdf)), and ([http://www.gamblingcommission.govt.nz/GCwebsite.nsf/Files/LicenceHamiltonVenue/\\$file/LicenceHamiltonVenue.pdf](http://www.gamblingcommission.govt.nz/GCwebsite.nsf/Files/LicenceHamiltonVenue/$file/LicenceHamiltonVenue.pdf)).

**Attachment 2**

### Reasons for the applications

SKYCITY has brought the applications because it wants to alter the mix of gaming tables and gaming machines that are deployed at the Hamilton casino in a manner contemplated by section 12(2)(a) of the Act. That is, it wants to increase the number of gaming machines in exchange for a decrease in the number of gaming tables.

The detailed supporting reasons for the applications are set out in a covering letter of application dated 10 December 2018, a copy of which is available on the Commission's website at [www.gamblingcommission.govt.nz/GCwebsite.nsf/Files/Sky-City-Hamilton-application/\\$file/SkyCity-Hamilton-application-December-2018.pdf](http://www.gamblingcommission.govt.nz/GCwebsite.nsf/Files/Sky-City-Hamilton-application/$file/SkyCity-Hamilton-application-December-2018.pdf).

### Decision to hold a public hearing

Following receipt of SKYCITY's letter of application, the Commission sought submissions from the Secretary for Internal Affairs, the Ministry of Health, Problem Gambling Foundation, Salvation Army and Hamilton Casino Monitoring Group. The Commission's initial intention was to consider SKYCITY's application on the papers.

Subsequently, some interested parties contacted the Commission with a request that a broad consultation process be adopted and that the Commission hold a public hearing of the application.

Although section 12 of the Act has been in force since 2003, SKYCITY's proposal is the first occasion on which a casino has applied to the Commission to increase its gaming machines in exchange for a reduction in table games. The application appears to have generated considerable public interest, particularly in the Hamilton and Waikato communities.

Having regard to the novelty of the proposed change and the extent of local community interest, the Commission decided to broaden the scope of consultation and to hold a public hearing.

### Public Notice

Schedule 3 of the Act requires the Commission to give notice of its public meetings to persons who are likely to be interested in the subject matter of the meeting. The Commission does so by this Notice.

### Process of hearing

In this Notice, the Commission gives directions covering the following:

- (a) receipt of written submissions from interested parties on SKYCITY's applications;
- (b) the filing of submissions strictly in reply by parties who have already filed submissions;

- (c) receipt of applications by interested parties to appear and be heard at the public hearing;
- (d) subsequent authorisation of parties to attend and be heard at the public hearing; and
- (e) the public hearing itself.

### **Written submissions**

The Commission invites written submissions on SKYCITY's applications. Written submissions may be made by anybody who wishes to do so. In addition to any other matter which a party wishes to raise, the Commission is particularly interested in submissions on two matters:

- Whether the proposed substitution of gaming machines for Black Jack tables at the casino is likely to have material harm implications (either positive or negative), the reasons for that view and how that should affect the application.
- Whether the proposed substitution would comply with the statutory prohibition on increases in opportunities for casino gambling (under which increases in the opportunities for casino gambling are prohibited by section 11 of the Act but, under section 12(2)(a), an increase in the number of gaming machines is not an increase in the opportunities for casino gambling if accompanied by a reduction in the number of table games that the Commission believes is proportionate).

Written submissions are to be lodged with the Commission by **17 May 2019** either by email: [info@gamblingcom.govt.nz](mailto:info@gamblingcom.govt.nz), or by mail: PO Box 137295, Parnell, Auckland 1052. Further written submissions, strictly in reply to the written submissions of other parties, may be lodged with the Commission, using the same means, by **31 May 2019**.

Submissions received after those dates will be received only with leave of the Commission.

Subject to any confidentiality directions which may be given by the Gambling Commission, all written submissions and evidence received, including written submissions in reply, will be made publicly available on the Gambling Commission's website.

### **Applications to appear and be heard at the public hearing**

The Gambling Commission invites those who wish to appear and be heard at the public hearing to apply to the Gambling Commission for authorisation to do so. Applications for authorisation to appear must be accompanied by:

- (a) the substantive written submissions of the party on SKYCITY's applications; and
- (b) a separate submission putting forward reasons to appear and be heard in person, rather than by written submission only.

The foregoing documents will be used to determine the application for authorisation to appear.

Only those authorised to appear may address the Commission at the public hearing. As the hearing will be public, persons or groups who are not authorised by the Commission to appear may attend the hearing to observe.

Applications for authorisation to appear must be lodged by **17 May 2019**. Applications after that date will be received only with leave of the Commission. The Commission reserves its power to authorise appearances at any time down to the end of the hearing.

### **Hearing**

Arrangements for the hearing will be publicly notified at a later date and will also be shown on the Gambling Commission's website. The hearing will likely take place in Hamilton.

### **Enquiries**

Any enquiries relating to the SKYCITY's applications or the hearing should be directed to Blair Cairncross, Executive Director, Gambling Commission at [blair.cairncross@gamblingcom.govt.nz](mailto:blair.cairncross@gamblingcom.govt.nz).

**DRAFT 1**

**Submission by  
Hamilton City Council**

**APPLICATION TO AMEND LICENCE CONDITIONS – SKYCITY Hamilton Casino**

**19 Feb 2019**

**1.0 POSITION**

- 1.1 The Hamilton City Council (HCC) is **strongly opposed** to the deployment of 60 additional gaming machines (**Pokies**) at SKYCITY Hamilton Casino irrespective of its substitution of three existing blackjack tables as proposed by SKYCITY to the Gambling Commission (**the Commission**).

**2.0 BACKGROUND**

- 2.1 Despite the Gambling Act 2003 (**the Act**) contemplating that casinos may increase the number of its Pokies under s12(2)(a) of the Act (provided that such increase is accompanied by a reduction in the number of is table games), the addition of 60 further individual Pokies is not proportionate to 3 individual tables and therefore a decision to allow this would enable an increase in opportunities to gamble which contravenes s11 of the Act. It is also noted in Appendix 4 of SKYCITY's application that 2 tables proposed for removal are located in the VIP room with only 1 table being removed from the general Casino floor. Using SKYCITY's own formula, there are 21 opportunities to gamble proposed for removal in exchange for 53 new opportunities (given only 7 pokies are to be added to the VIP room). The net increase on the general Casino floor is therefore 32 pokies. The rational of 63 opportunities to gamble by 3 tables being reduced to 60 chances to gamble with pokies is also inaccurate. The ability to have 63 opportunities is dependent on a person to play a hand and only then is there the ability to have additional gambling opportunities. Pokies exist as autonomous machines independent of requiring other players. Further, the proportionality in conjunction with the proposed floor plan change leads to an increase in opportunities to gamble by the general public and again is a contravention of Section 11 of the Gambling Act.
- 2.2 HCC has a position on gambling to reduce Pokies in the community progressively overtime via its sinking lid policy whereas the SKYCITY proposal of 60 new pokies contradicts this position. Given SKYCITY and HCC serve the same community, both must be in alignment. Local councils have been empowered by Central Government to determine whether to have a sinking lid on the number of Class 4 venues and Pokies, yet under the Act, councils are not provided the opportunity to determine the number of Pokies within a Casino which resides within its community. This creates a significant inconsistency between the community expectations for greater localised control of gambling and the reality of the gambling as it is prescribed in the Act. The Council therefore continues to invest resources adopting various

Class 4 venue policies which provide a position on Pokies which are within Class 4 venues but the Act enables SKYCITY to disregard this position and enables it to introduce more Pokies into the community.

- 2.3 The proposal will significantly increase revenue, yet SKYCITY is only required to provide 1.5% of this revenue for distribution to the community compared to Class 4 trusts, which provide 40% of proceeds for distribution to the community. As the Act seeks to balance the potential harm from gambling against facilitating responsible gambling which ensures money from gambling benefits the community, HCC challenge whether enabling any further change to Casino will be consistent with the purpose of the Act. Given this significant disparity between the Casino and Class 4 trusts, the Commission must review the 1.5% requirement as part of SKYCITY's proposal in amending SKYCITY's licence to align closer to or exceed Class 4 trusts 40% requirement.
- 2.4 The Act allows for the growth of some forms of gambling (e.g. Class 4 and TAB) to be controlled through councils but not others (e.g. casinos). The Commission, has and continues to have, the ability to make decisions on behalf of Hamilton's community, providing the 13 elected representatives of its local community only the opportunity to make a non-binding submission. The decision on whether SKYCITY's proposal is approved sits with the Commission, yet, the views of local elected representatives, who understand their local community, do not get to make the decision.
- 2.5 Section 140 of the Act empowers the Commission to notify anyone it considers as affected. The Commission have restricted submissions from affected parties to only being the Department of Internal Affairs, the Ministry of Health, Problem Gambling, Salvation Army and the Council. The organisations identified are not reflective of all affected parties therefore the submission process must be open to the public with an opportunity to speak provided given the impact of this proposal.
- 2.6 SKYCITY's application outlines no evidence of how the community of Hamilton will significantly benefit from this proposal. There is also no evidence that SKYCITY have consulted with the community or Casino patrons as to ascertain what support there is for the proposed increase in pokies. This would further endorse that the decision to increase pokies is revenue/profit driven as opposed to being a response to patron demand.
- 2.7 For the above reasons, HCC is strongly opposed to SKYCITY's proposal.

### 3.0 FURTHER INFORMATION AND HEARING

- 3.1. Any evidence supporting HCC's submission has been attached and HCC **want to speak** to the Commission in support of its written submission.
- 3.2. Should the Commission require clarification of the points raised in this submission, or further information, please contact Andy Mannering (Community and Social Development Manager) on 07 838 6465, email [andy.mannering@hcc.govt.nz](mailto:andy.mannering@hcc.govt.nz) in the first instance.

Yours faithfully

**Richard Briggs**  
**CHIEF EXECUTIVE**