

IN THE MATTER of the Gambling Act 2003

AND on an application by **SKYCITY CASINO MANAGEMENT LIMITED** to amend a licence condition

BEFORE THE GAMBLING COMMISSION

Members: P Chin (Chief Gambling Commissioner)
M M Lythe
P J Stanley
G L Reeves
M J Richardson

Date of Application: 18 July 2008

Date of Decision: 19 September 2008

Date of Notification
of Decision: *gtl* October 2008

**DECISION
ON AN APPLICATION BY SKYCITY CASINO MANAGEMENT LIMITED
TO AMEND A LICENCE CONDITION**

Introduction

1. SKYCITY Casino Management Limited ("**SCML**") applied, under section 139(1)(d) of the Gambling Act 2003 (the "**Act**"), to vary condition 4 of SCML's operator's licence for the Auckland casino to insert the following definition:

Gaming table means a table which complies with the requirements applicable to a table layout as set out in the Rules of Casino Table Games and which is used or intended to be used for the conduct of casino gambling.

2. The Secretary for Internal Affairs (the "**Secretary**") and potentially affected persons comprising Ministry of Health ("**MoH**"), Problem Gambling Foundation ("**PGF**"), Gambling Helpline ("**GH**"), the Salvation Army ("**SA**"), Christchurch Casinos Limited ("**CCL**"), Dunedin Casinos Management Limited ("**DCML**") and Otago Casinos Limited ("**OCL**") were notified of SCML's proposal on 28 July 2008, and invited to make written submissions on it in accordance with section 140 of the Act. Submissions were made by PGF, SA, DCML and the Secretary.

Licence condition

3. A relevant licence condition is as follows:

6. The number of gaming tables in the Gambling Area shall not exceed 110.

The Gambling Act 2003

4. The relevant sections of the Act are as follows:
- 3 The purpose of this Act is to –
- (a) control the growth of gambling; and
 - (b) prevent and minimise the harm caused by gambling, including problem gambling; and
 - (c) ...
 - (d) facilitate responsible gambling; and
11. **No increase in casino gambling**
A person must not increase the opportunities for casino gambling
139. **Conditions of casino licence**
- (1) .
- (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 SCML

5. SCML submitted, in summary, that:
- (a) It wants to install up to eight “Fun Play” tables to offer interested people instruction in how to play particular table games. It intends to deploy the eight tables, which would be in addition to the 110 gaming tables permitted under licence condition 6, in the level 3 Gambling Area that backs onto “Bar 3”.
 - (b) It has, in the past, used gaming tables on the level 3 Gambling Area for Fun Play purposes. On those occasions it has used regular gaming tables with the chip floats removed. It has not been able to offer the Fun Play tables during peak periods as they have been required for casino gambling.
 - (c) It is not clear whether it can presently install Fun Play tables without breaching licence condition 6, as this depends on how “gaming table” is interpreted (“gaming table” is not defined in the Act, or elsewhere), but it is reasonable to assume that it relates to a device that is, or will be, used for gambling.
 - (d) While its preference would be to install the Fun Play tables without amending licence conditions, as an alternative, it applies to amend licence conditions to insert a definition of “gaming table” which would not include Fun Play tables or other tables that will not be used for casino gambling purposes.

- (e) The intended Fun Play tables would look like gaming tables, but a number of safeguards would be in place to ensure that they could never be used for casino gambling purposes, including:
 - (i) the layout being marked that the tables are for "Fun Play Only – Not To Be Used For Gambling";
 - (ii) the tables would not be provisioned with drop boxes, so monetary transactions could not be conducted and the drop box slot will either be removed or covered; and
 - (iii) the tables would not be connected to the casino's gaming system, so they could not be allocated chip floats or opened for gaming purposes
- (f) The provision of responsible instruction in the conduct of games will not exacerbate harm and the deployment of tables which fall outside the proposed definition will not increase the opportunities for casino gambling as gambling will not be permitted at those tables.

Submissions by Problem Gambling Foundation

- 6 PGF submitted, in summary, that it was opposed to the application as:
 - (a) Allowing it would be contrary to section 139(2)(d) of the Act in that a condition of a casino licence must not permit an increase in the opportunities for casino gambling.
 - (b) Allowing it would be contrary to the first two purposes of the Act; namely to control the growth of gambling, and prevent and minimise harm caused by gambling, including problem gambling.
 - (c) Allowing it would free up eight more gaming tables for the conduct of gambling.
 - (d) Many people would use the Fun Play tables for preparation and confidence building before gambling on gaming tables. This would lead to an increase in opportunities for casino gambling and probably an increase in the harm caused by gambling, including problem gambling.
 - (e) Some players may be tempted to place informal bets on the tables.

Submissions by Salvation Army

- 7. SA, in summary, offered the following queries and comments:

- (a) What games would be available for Fun Play sessions? Will any new games be introduced?
- (b) What does “responsible instruction” include?
- (c) The odds on the Fun Play tables need to be the same as the odds on the respective gaming tables in the casino’s Gambling Area
- (d) It would be useful to have definitions of “gaming table” and “Fun Play table”
- (e) The Fun Play tables should be limited to eight, be representative of the gaming tables already operating, and be restricted to a designated Fun Play area.
- (f) The Fun Play tables should not be used to trial new products.

Submissions by Dunedin Casinos Management Limited

8 DCML submitted, in summary, as follows:

- (a) It supports educational opportunities for people interested in learning how to play table games without the risk of losing money.
- (b) The proposal is consistent with the purposes of the Act.
- (c) The proposal is consistent with criteria set out in section 139(2) of the Act.

Submissions by the Secretary for Internal Affairs

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

- (a) Fun Play tables can be introduced without breaching licence condition 6 of SCML’s operator’s licence, and he agrees with SCML’s assessment that “gaming tables” should relate to tables where gambling occurs.
- (b) One of the purposes of the Act (at section 3(d)) is to “facilitate responsible gambling”. The definition of “responsible gambling” includes gambling that is conducted “by informed participants who understand the nature of the activity and do not participate in ways that may cause harm” The introduction of Fun Play tables could be viewed as being consistent with this purpose.
- (c) Another purpose of the Act (at section 3(b)), is to “prevent and minimise harm caused by gambling including problem gambling”. It could be argued that the provision of an entry point for learning new games could lead to additional harm exposure as some players, who may not have otherwise gambled on table games, will gamble on the tables. Alternatively, it could be argued Fun Play

tables may attenuate harm should they make table games more attractive and attract patrons away from gaming machines, the most harmful form of gambling. On balance, it may be difficult to conclude that the proposal increases or decreases harm

- (d) The proposal would not breach section 11 of the Act, as it will not increase opportunities for casino gambling, as no gambling would be permitted on Fun Play tables.

Submissions in reply by SCML

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

- (a) Providing instruction on Fun Play tables would not increase opportunities for casino gambling; opportunities would continue to be limited to the number of games that it may operate under the terms of its licence conditions.
- (b) It would not use Fun Play tables to trial new games, and the odds on the Fun Play tables would be the same as those on casino gaming tables.
- (c) If the Commission accepts the Secretary's submission that Fun Play tables cannot be gaming tables, then no variation to the licence conditions would be required.
- (d) If the Commission is inclined to regulate Fun Play tables, the Commission may wish to consider variations to SCML's licence conditions. It would consider any proposals put forward and would not object to a proposal which provided for the installation of a limited, but reasonable, number of Fun Play tables. In the meantime, it could provide an undertaking that it would not install more than eight Fun Play tables, and it would advise the Commission and the DIA of the location, and time, when any such tables were installed

Analysis

- 11. It is apparent from the submissions received that considerable confusion has emerged, on the part of those making submissions, between what SCML has applied for and what it says it proposes to do. SCML's covering letter contains a detailed exposition of the proposed installation of eight Fun Play tables including the reasons for their installation in addition to the currently permitted gaming tables, and considerable detail regarding their proposed number, location, appearance and use. However, the application does not seek approval for those proposed additional tables, including acceptable conditions for their use, location or even number. What the application seeks instead is a restrictive definition of "gaming table" for the purposes of the licence conditions

12. The effect of the proposed amendment would be to limit the application of the licence conditions and consequently result in an absence of control over the use and deployment of anything which fell outside the definition. Once this is understood, it can be seen that the submissions summarised above are largely misfocused, as they address the specific proposed use which SCML outlined in its covering letter and whether or not the use should be permitted at all or on strict terms. Granting the application would involve no permission or approval and the Commission would have no means of imposing any conditions on use.
13. "Gaming table" is not defined in the Act or in the licence. SCML's submissions, supported by the Secretary, suggest that the Commission adopt the view that the present licence and related restrictions, which limit the number, type and location of gaming tables, do not affect Fun Play tables or anything like them and the Commission confirm that the licence conditions do not control the placement or use of such tables. In the alternative, SCML's application involves inserting the definition set out in paragraph 1, which is intended to have the same effect.
14. The Commission does not agree that references in casino licences to gaming tables should be restrictively interpreted as being limited to tables where gambling actually occurs or takes place. In the Commission's view, the term extends to any table on which gambling might occur or which appears to have been designed for the playing of games of chance. For the reasons set out below, it declines to insert the proposed restrictive definition of "gaming table" into the licence conditions. In the Commission's view the licence conditions presently limit the number of tables which appear to be intended for the playing of games of chance in the casino, irrespective of their actual or intended use at any given moment, and it declines to approve any amendment intended to limit control over such tables.
15. The proposed definition contains two distinct elements both of which would need to be satisfied if the subject were to be regarded as a gaming table:
- (a) Conformity with the Rules requirements: This element would require exact and full conformity with every aspect of the Rules. If any requirement were not met, no matter how minor, the item would not be regarded as a gaming table for the purposes of the licence.
 - (b) Use or intent to use: The definition does not make clear the point in time at which this element is to be met. Is a table which has ever been used for casino gambling within the definition, irrespective of its present use? If it refers to present use, how present? Today? This week? This year? Similar considerations apply to the establishment of intent with the additional difficulty of



establishing the fact of intent, something which may not be objectively demonstrable.

16. Combining the foregoing elements to create a composite definition means that establishing that anything in particular is a gaming table would not be straightforward. Doubts about the status of a table could arise from minor regulatory requirement departures, or doubts about use or intention to use (and the relevant timeframe therefor). The definition would create legal definitional certainty about what constitutes a gaming table but at the expense of factual uncertainty, practical inflexibility and difficulty of monitoring compliance and enforcement.
17. The idea that use determines whether something is a gaming table is problematic because the licences and floor plans have always controlled the deployment of what appear to be gambling tables irrespective of their actual use. Other than during peak periods, the tables may be shut and not in use. To date, no one has been in doubt that the number and placement of those tables is controlled by the licence and floor plans, even when not in actual use.
18. Putting to one side the practical difficulties which could be expected to arise from the proposed definition in determining whether any particular table is legally a gaming table, further problems can be expected to arise from the lack of consequent control over anything which is not a gaming table as defined.
19. SCML has carefully set out a detailed proposal for deploying Fun Play tables, including number, placement and restrictions on use. However, if the amendment were made, none of those elements would be required legally. There would be no constraints of any nature on the number, placement or use of any tables which were not technically gaming tables as defined. There would be no requirement to segregate them or to limit their number. SCML would not be required to operate them as proposed. No other table, which fell technically outside the definition, would be controlled either. All such tables would be legally irrelevant, outside the ambit of the licence conditions and outside the control of the Commission.
20. In the Commission's view, the proposed change is highly undesirable from a compliance and enforcement point of view. It would create difficulties for the policing of the licence condition controls because no assumptions could be made about any particular table without a careful examination of it for compliance with the Rules (that is, operators could make tables legally "invisible" by minor and temporary modification) and inquiry into its actual and intended use. In addition, no activity relating to the placement or use of tables which did not fall within the definition would be controlled in any way. Because the



number and placement is not controlled, checking to see that gambling was not taking place at "non-gaming" tables would not be straightforward.

21. Because of the view which the Commission has taken on the meaning of "gaming table" and its rejection of the proposed amendment to restrict the meaning and application of the licence control as proposed, there is no need for the Commission to address the submissions which it received concerning the anticipated approval of Fun Play tables, including whether such an approval would give rise to an increase in the opportunities for casino gambling or concerns about problem gambling harm. The submissions were made under the misapprehension that SCML was seeking approval for the deployment of eight Fun Play tables, whereas what the application sought was the absence of any control or restriction of any kind over anything which did not fall within the proposed composite definition. Because of the nature of the supporting material, the misapprehension is understandable. As the Commission declined the application, the issues addressed in the submissions do not arise. If an application is later made for an increase in the number of gaming tables permitted, in combination with the imposition of conditions restricting their use, consideration will need to be given to those issues at that stage.

Decision

22. The Commission declines the application by SCML, under section 139(1)(d) of the Act, to vary condition 4 of SCML's operator's licence to insert SCML's proposed definition of "gaming table".


Graeme Reeves
 Gambling Commissioner

for and on behalf of the
 Gambling Commission

of October 2008



