

**IN THE MATTER** of the Gambling Act 2003  
**AND** on an application by **DUNEDIN CASINOS MANAGEMENT LIMITED** to amend a licence condition

**BEFORE THE GAMBLING COMMISSION**

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

Date of Application: 24 January 2007

Date of Decision: 18 May 2007

Date of Notification  
of Decision: 31 May 2007

**DECISION**

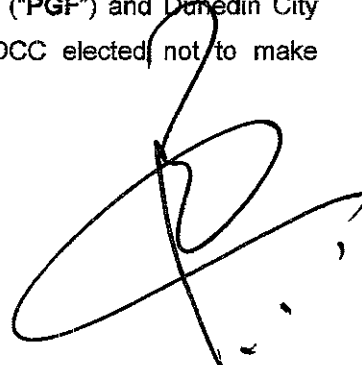
**ON AN APPLICATION BY DUNEDIN CASINOS MANAGEMENT LIMITED TO AMEND A LICENCE CONDITION**

**Application**

- 1 Dunedin Casinos Management Limited ("DCML") applied to the Gambling Commission (the "Commission"), under section 139 of the Gambling Act 2003 (the "Act"), to amend condition 8.3 of its operator's licence to extend the period during which the Dunedin casino does not have to offer any table games for play, and to reduce from two to one, the number of tables that it must have open for play at all other times

**Gambling Act 2003 and licence condition**

2. The application to amend the licence condition was made under section 139 of the Act. Section 140(1) of the Act requires the Commission to notify the Secretary for Internal Affairs, and any other person who it considers is affected, of proposed amendments. In this instance, the Commission, in addition to the Secretary, notified the Charity Gaming Association ("CGA"), and the Problem Gambling Foundation ("PGF") and Dunedin City Council ("DCC") of the proposal, seeking submissions. DCC elected not to make submissions.



3 Licence condition 8 3 currently provides as follows:

8 3 The licence holder shall ensure that there are at least two authorised table games open for play while the casino is operating, except between the opening of the casino on a calendar day and noon on that day, during which period the licence holder may, but shall not be required to, offer table gaming in the casino

#### Submissions by DCML

4 DCML stated that:

- (a) Its current licence conditions do not require it to open a table game for play from the opening of the casino (currently 10am) to noon. Following the High Court judgment of Pankhurst J (Dunedin Registry CIV-2006-412-000390), confirming that DCML may operate the casino 24 hours per day, it wishes to extend this period to between 4am and noon
- (b) It also wants to reduce the number of table games required to be open for the remainder of the day, from two to one

5 To reflect this outcome, DCML proposed that condition 8 3 be amended as follows:

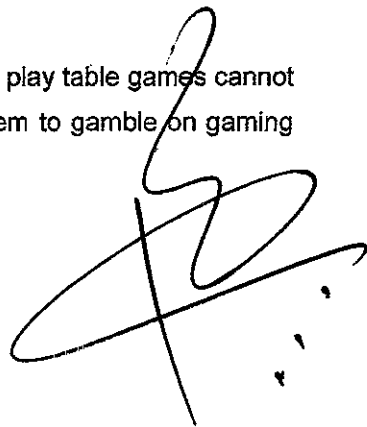
8 3 The licence holder shall ensure that there ~~are~~is at least ~~one~~two authorised table games open for play while the casino is operating, except between the ~~opening of the casino on a calendar day~~ 4am and noon on that day, during which period the licence holder may, but shall not be required to, offer table gaming in the casino

6. DCML submitted that the proposal would allow for the more effective management of its staff during periods at the casino when table games are not in demand, and was consistent with section 139(2) of the Act.

#### Submissions by the Secretary for Internal Affairs

7 The Secretary did not support DCML's proposal and, in summary, submitted that:

- (a) the proposal would allow DCML to operate with no table games open for play for up to eight hours per day, and with only one table open for up to 16 hours per day;
- (b) there is demand for at least two table games from at least 7 30pm until closing time;
- (c) he cannot support a proposal where patrons who wish to play table games cannot do so because they are closed, instead encouraging them to gamble on gaming machines, which are more harmful;



- (d) the proposal will turn Dunedin casino into a large "pokie parlour";
- (e) DCML should have tables available for a significant proportion of its opening hours in order to maintain the nature and standard of the casino;
- (f) if the Commission approves the proposal, it could introduce an appropriate table to gaming machine ratio to provide for a proportionate reduction in the number of gaming machines.

#### **Submissions by the Charity Gaming Association**

8 CGA did not support DCML's proposal and, in summary, submitted that:

- (a) the changes would result in the casino becoming a large class 4 venue, without the requirement to distribute its proceeds to the public;
- (b) removing the requirement to offer table games would remove the most important point of differentiation between a casino and a class 4 venue

#### **Submissions by the Problem Gambling Foundation**

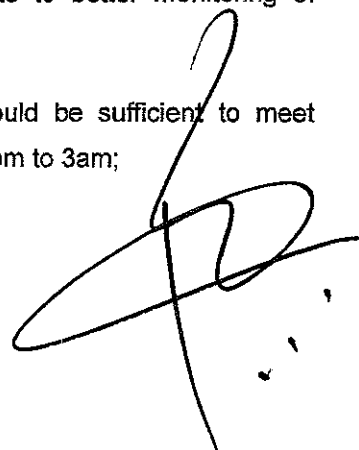
9 PGF did not support DCML's proposal and, in summary, submitted that:

- (a) it is important to maintain the distinction between casinos and class 4 venues, including the requirement to have at least two table games open for play;
- (b) if DCML could operate less than two table games, it should be considered to be a class 4 venue, subject to the class 4 legislative and regulatory requirements

#### **DCML's submissions in reply**

10 In reply, DCML submitted, in summary, that:

- (a) the purpose of the proposal is to provide greater business efficiency and to allow it to run its business according to demand;
- (b) the proposal would reduce opportunities for casino gambling by reducing the number of tables potentially available for play;
- (c) freeing up staff from unused tables would contribute to better monitoring of patrons and minimise any potential harm;
- (d) one gaming table open for play during the day would be sufficient to meet customer demand, with this demand increasing from 6pm to 3am;



- (e) there should be no requirement for it to staff unused tables simply to provide a point of differentiation between it and class 4 venues;
- (f) a gaming machine to table ratio, as submitted by the Secretary, would be unreasonable;
- (g) if the Commission was not inclined to amend condition 8 3 as originally sought, it could be amended as follows:

8 3 The licence holder shall ensure that there ~~are~~<sup>is</sup> at least ~~two~~<sup>one</sup> authorised table games open for play between the hours of midday to 6pm, at least two authorised table games open for play between the hours of 6pm to 3am, at least one authorised table game open for play between the hours of 3am and 6am, and zero tables open for play between 6am and midday ~~the opening of the casino on a calendar day and noon on that day~~, during which period the licence holder may, but shall not be required to, offer table gaming in the casino

### Analysis

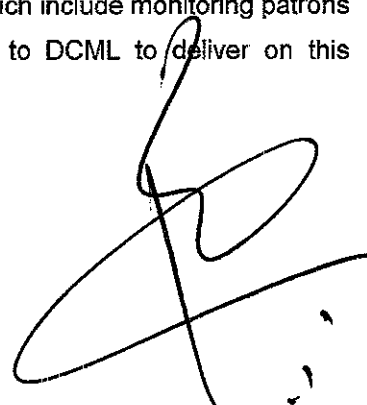
- 11 DCML has applied to the Commission to amend condition 8 3 of its operator's licence. The application has been made in the alternative, with DCML's preferred outcome being for the condition to be amended as per its original application, and its alternative being as per its submissions in reply.
- 12 The application arises out of the judgment of the Dunedin Registry of the High Court in December 2006, confirming that DCML is permitted to operate the Dunedin casino 24 hours per day, seven days per week, subject to certain statutory exceptions. At present, it is understood that the Dunedin casino (usually) operates from 10am to 3am.
- 13 The Commission noted that the Secretary, CGA and PGF all opposed the application for a range of reasons, centred on the potential for increased risk of harm, and a blurring of the distinction between class 4 and casino venues.
- 14 The Commission considered that the application raised the following key issues:
  - (a) Would the proposal increase opportunities for casino gambling?
  - (b) Would the proposal have negative harm minimisation implications?
  - (c) Would the proposal blur the distinction between the casino and class 4 venues?
  - (d) If the Commission decided to amend condition 8 3, which of DCML's two proposals should be allowed?

*Increase in opportunities for casino gambling*

- 15 The Commission considered whether DCML's proposal would increase opportunities for casino gambling, such increases being prohibited by section 11 of the Act
- 16 At present DCML is permitted to operate 12 table games and 180 gaming machines 24 hours a day, seven days per week, except for the statutory exceptions set out at section 172 of the Act
- 17 The Commission considered it clear that either amendment sought by DCML would not increase opportunities for casino gambling Both proposals could reduce the number of gaming tables required to be open for play, with the number of gaming machines available being unaffected by either the preferred or the alternative proposal, and remain at 180

*Harm minimisation*

- 18 The Secretary submitted that DCML's proposal could have negative harm minimisation implications for patrons, including possible problem gamblers This was because patrons would be forced to play gaming machines, which he submitted are more harmful than table games, if they entered the casino and no table games were available to play
- 19 In reply, DCML provided (limited) data that suggested that only a small percentage of the casino's patrons would consider playing gaming machines if tables were not available DCML also submitted that if there was demand for a table to be opened, it would be, otherwise the staff associated with that table would be deployed elsewhere in the casino, including to monitor patrons
- 20 The Commission did not consider that DCML's proposal would necessarily give rise to the negative harm minimisation implications suggested by the Secretary The availability of gaming machines is unchanged by the proposal As to patrons being forced from tables to machines, DCML's commercial interest suggests that the casino is likely to open tables for play if there is demand to do so The amendment sought by DCML is to exempt it from the requirement to open tables – it does not compel DCML to close tables
- 21 The Commission also notes DCML's submission that staff who are freed up from standing behind unused tables will be able to be involved in tasks which include monitoring patrons for signs of problem gambling The Commission looks to DCML to deliver on this undertaking

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*Distinction between casinos and class 4 venues*

22 The Secretary, CGA and PGF all submitted that if condition 8.3 was amended, it would blur the distinction between casinos and class 4 venues. The Commission was not persuaded by this submission, having considered what it views as important distinctions between casinos and class 4 venues:

- (a) First, a casino's primary purpose is to provide gambling facilities to the public. Gambling cannot be a class 4 venue's primary activity – it must always be subsidiary to another activity.
- (b) Secondly, casinos may offer table games for play, which class 4 venues cannot.
- (c) Thirdly, gambling at class 4 venues is limited to up to 18 gaming machines in a gaming room that is often separated from the main activities at the venue. This is quite distinct from a casino where there are often large numbers of machines and tables, which are positioned centrally. Dunedin casino has 12 gaming tables and 180 gaming machines.
- (d) Fourthly, the purpose of class 4 gambling is to raise funds for authorised charitable purposes. Casinos are not subject to this obligation. The Dunedin casino is a privately held company and has no obligation to raise funds to the community, other than to contribute to a charitable trust pursuant to its licence conditions.

23 The Commission concluded that the proposal would not impact on these key distinguishing features, and was not persuaded the submission that the change would enable the casino to become a large class 4 venue.

24 The Commission was also mindful that the Casino Control Authority had already granted previously to Wharf casino, SKYCITY Queenstown casino and Hamilton casino exemptions from their original licence conditions in relation to their numbers of table games, and the times they are open for play. These exemptions were all sought on the basis of insufficient demand for table games at certain periods of the day.

25 Wharf casino is not required to offer table games for play until 5pm, and need open only one table for play thereafter. SKYCITY Queenstown is not required to offer any table games for play until 6pm, and need open only one table for play thereafter. The Hamilton casino is not required to offer any tables for play between 9am and 11am, and need open only two tables for play thereafter. The argument has not been mounted that these exemptions have undermined the nature and status of these casinos and the

Commission considered that an amendment of the type(s) sought by DCML similarly would not undermine the nature and standard of the Dunedin casino

- 26 The Commission did not consider it appropriate to introduce a table to machine ratio, as submitted by the Secretary, as to do so would be inconsistent with the exemptions allowed to other casinos

*Which of DCML's two proposals should be allowed?*

- 27 Having determined that it should amend condition 8.3, the Commission next considered whether to allow the exemption as originally sought by DCML, or DCML's alternative proposal
- 28 The Secretary submitted that DCML did not need the wide exemption it originally sought as there is demand for table games at times when DCML sought to reduce table numbers. DCML accepted this in its submissions in reply
- 29 The Commission decided that the alternative proposal was preferable as it would allow DCML the flexibility it needed to manage its staff, while still recognising the demand (or lack thereof) for tables at particular hours of the day. The amendment as originally sought was considered by the Commission to be wider than needed
- 30 For clarity, the Commission made minor amendments to the drafting of the alternative condition proposed by DCML.

### Decision

- 31 For the reasons already provided, the Commission decided to amend condition 8.3 of DCML's operator's licence, pursuant to section 139 of the Act, to state as follows:

8.3 The licence holder shall ensure that there is at least one authorised table game open for play between the hours of midday to 6pm, at least two authorised table games open for play between the hours of 6pm to 3am and at least one authorised table game open for play between the hours of 3am and 6am. Between the hours of 6am and midday, the licence holder may, but shall not be required to, offer table gaming in the casino



Peter Chin  
Chief Gambling Commissioner

for and on behalf of the  
Gambling Commission

31 May 2007