

IN THE MATTER of the Gambling Act 2003
AND on an application by **SKYCITY CASINO MANAGEMENT LIMITED**
for approval of new game mixes for
the Hamilton casino

BEFORE THE GAMBLING COMMISSION

Members: G L Reeves (Chief Gambling Commissioner)
P J Stanley
L M Hansen
R D Bell
A K Foote

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Date of Decision: 15 February 2013

Date of Notification
of Decision: | March 2013

**DECISION ON AN APPLICATION BY SKYCITY CASINO MANAGEMENT LIMITED
FOR APPROVAL OF NEW GAME MIXES FOR THE HAMILTON CASINO**

Introduction

1. SKYCITY Casino Management Limited ("**SCML**") has applied to the Commission for approval, under condition 9 of SCML's operator's licence for the Hamilton casino, to vary its game mixes.
2. The relevant licence condition is as follows:

SCML's operator's licence (Hamilton)

9. The Licence Holder may operate on casino gaming tables the game types and game mixes specified in Annex A attached to this Licence. The Licence Holder shall obtain the prior approval of the Commission for any change to the game types and/or game mixes specified.
3. The relevant law is as follows:

Gambling Act 2003

12 What is increase in casino gambling

- (1) Decisions on what constitutes an increase in the opportunities for casino gambling are a function and responsibility of the Casino Control Authority, until section 297 of this Act comes into force, and of the Gambling Commission after that.
- (2) An increase in the opportunities for casino gambling includes but is not limited to—

- (a) an increase in the number of gaming machines unless the increase is accompanied by a reduction in the number of table games that the Casino Control Authority, or the Gambling Commission, believes is proportionate:
 - (b) an increase in the number of table games unless the increase is accompanied by a reduction in the number of gaming machines that the Casino Control Authority, or the Gambling Commission, believes is proportionate:
 - (c) an increase in total player space at table games unless the increase is accompanied by a reduction in other opportunities for casino gambling that the Casino Control Authority, or the Gambling Commission, believes is proportionate.
- (3) Opportunities for casino gambling are not increased—
- (a) by increases, in the Auckland casino, that comply with the Order for the Variation of Conditions of Casino Premises Licence dated 6 December 2002:
 - (b) by gambling conducted by the New Zealand Racing Board referred to in section 120.

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).

SCML's submissions

4. SCML submitted, in summary, as follows:

- (a) It currently has six approved game mixes for the Hamilton casino. It wants to amend these by removing two game mixes and adding 10 new game mixes.
- (b) Proposed game mixes 5, 6 and 7 are the same as the currently approved game mixes 2, 3 and 4, with one exception; they provide for the operation of 23 Electronic Roulette terminals rather than the existing 12 terminals. The introduction of the additional terminals will not increase opportunities for casino gambling (compared to the benchmark game mix).
- (c) Proposed game mixes 8, 9 and 10 are the same as the currently approved game mixes 2, 3 and 4 with two exceptions; each of these game mixes provide for the

operation of 30 Electronic Roulette terminals. The introduction of 18 additional roulette terminals without any other compensating changes would mean that the gambling opportunities associated with these particular mixes would exceed the regulatory benchmark. Therefore, it wants to place restrictions on two Black Jack games to limit the number of players permitted to wager on any one box, to two.

- (d) Rule 14.1 of the Black Jack Rules provides that the casino operator may permit up to three players to wager on any one box. The effect of this rule, in conjunction with the standard 7 wagering boxes, is to create 21 player spaces on a game of Black Jack. The proposed restriction would reduce to 14 the number of player spaces on Black Jack games which are subject to the restriction. The proposed game mix would require the wagering restriction to be inscribed on the table layout so the position is clear to both staff and players.
- (e) The imposition of restrictions on back-betting positions has previously been considered by the Commission. In GC10/06, Otago Casinos Limited (“OCL”) obtained approval of a game mix which relied on a restriction on the number of players that could wager on back-betting positions in a game of Midi Baccarat, to ensure the new arrangements did not increase casino gambling opportunities. While approving that application, the Commission noted that it should not be assumed that similar applications at other casinos would automatically be approved.
- (f) Issues highlighted by the Commission in that decision which might be pertinent to any subsequent applications included: the history of play of certain games, and whether compliance and enforcement issues might arise from such a limitation. The Commission also confirmed its policy against imposing limited restrictions on table games (where there would be reduced numbers on some tables but not others of the same game type within a casino). The Commission has since softened its approach to the latter issue as evidenced by decision GC11/07, and subsequent decisions, which allow for the deployment of a limited number of 5 box Black Jack games in casinos.
- (g) It now wants to revisit the issue of restrictions on back-betting positions in the context of this application.
- (h) Black Jack games have always been played at the Hamilton casino and three players have traditionally been allowed to wager on one box. That said, it does not anticipate any compliance and enforcement issues arising from the imposition of the proposed restriction on only a limited number of Black Jack games.



- (i) The game rules provide the casino operator with discretion as to how many players may be permitted to wager on any 1 box, up to a maximum of 3. There are many other areas of the game rules where the casino operator is afforded a similar discretion.
- (j) More recently Black Jack rules have been amended which enable casino operators to offer different variations of Black Jack, where wagers may be paid at different odds, and the circumstances in which additional cards must be drawn to the dealer's hand now differs, depending on the Black Jack variation adopted. Key differences of this nature are normally reflected in the wording used on the layout which is what it proposes when imposing restrictions on the number of players that may wager on any 1 box.
- (k) Thus Black Jack is no longer a generic game, but rather a game where different variations may be offered to players.
- (l) The practice of deploying Black Jack games with a reduced number of wagering boxes has previously been approved by the Commission in GC11/07. In the context of casino gambling opportunities, there is no difference between offering fewer wagering boxes and the same number of boxes with fewer players permitted to wager on those boxes; both approaches result in a loss of gambling opportunities, and both scenarios are specifically provided for in the game rules.
- (m) The effect of the proposed restriction is to remove gambling opportunities from one game type, Black Jack, to allow for an increase on another game type, Electronic Roulette. The net overall effect is a reduction in gambling opportunities.
- (n) The purpose in transferring or relocating the opportunities in the manner proposed is to create greater potential for the opportunities to be realised. In effect, a gambling opportunity in the form of an Electronic Roulette terminal is likely to be utilised to a greater extent than a gambling opportunity in the form of a back-betting position on a Black Jack game at Hamilton casino. Irrespective of whether one is more attractive than the other, both are recognised casino gambling opportunities.
- (o) Game mixes 11 and 12 provide for an increase in the number of Midi Baccarat tables, an increase in Roulette games, fewer Black Jack tables, and the flexibility to install a Midi Baccarat table as an alternative to a Black Jack table. Both of these game mixes provide for the operation of up to 23 Electronic Roulette terminals and both include the same wagering restrictions on two Black Jack

games. The mechanism for switching between game mixes 11 and 12 would be by way of a flip-top table arrangement, which the Commission has previously approved.

- (p) Game mixes 13 and 14 are the same as 11 and 12, except that they each provide for the operation of 30 (rather than 23) Rapid Roulette terminals.
- (q) The impact of the proposed new game mix on player spaces and opportunities is set out in the table below. The new game mixes have fewer player spaces and opportunities than the regulatory benchmark, game mix 1.

Game Mix	Player Spaces	Overall gambling opportunities
1	464	14,165
5	464	13,999
6	452	12,950
7	458	13,729
8	457	13,680
9	445	12,631
10	451	13,410
11	456	13,725
12	456	13,956
13	463	13,851
14	463	14,082

The Secretary's submissions

5. The Secretary submitted, in summary, as follows:
 - (a) There have been at least two previous decisions where the Commission has considered the distinction between 'frontline' and 'back-betting' positions at table games. In decision GC29/05, SCAL applied for approval of new floor plans to substitute Rapid Roulette for a Black Jack table. In its application, SCAL noted that the deployment of 20 Rapid Roulette terminals arguably presented more frontline gambling opportunities compared to Black Jack, which generally accommodates seven seated players, with provision for back-betting by up to 14 players. The Commission approved the application, being satisfied that no increase in opportunities for casino gambling would result, but acknowledged that "it considers that it is appropriate to have regard to whether player spaces are at the table or back-betting positions and the Applicant and the Secretary should address this point in the future, if relevant."
 - (b) In decision GC10/06, OCL applied for Commission approval of an alternate game mix casino which would allow for the operation of Poker and Midi Baccarat on its second flip-top table instead of Black Jack and Mini Baccarat. In order to ensure

the number of player spaces did not increase when Midi Baccarat was played, OCL proposed to limit the number of players that may wager on a box to two.

- (c) The Commission approved the application, thus allowing the increase in player spaces to be offset by limiting back-betting positions. However it is important to note the particular circumstances that were taken into account by the Commission in making its decision. For example, the Commission noted the casino's small size and patronage, its exemplary compliance record, absence of a recent history of play of Midi Baccarat, and the fact that there was to be no increase in the number of gaming tables.
- (d) In contrast to OCL, not all of these special circumstances seem applicable to the current application. Hamilton casino is, comparatively, not small in size and patronage, and it does have an extensive history of Black Jack play.
- (e) In GC10/06, the Commission further stated that it should not be assumed that a similar approach would be taken at the larger casinos, if there were a history of play of certain games, or if compliance and enforcement issues would arise from such a limitation, or if an increase in tables or gaming machines were sought in exchange for a reduction in back-betting positions.
- (f) In contrast to GC10/06, SCML currently seeks to apply restrictions to only some of its Black Jack tables, and not others. He would be concerned with this if it had the potential to lead to confusion amongst players at the casino. However the proposal to have clear markings on the tables noting the back-betting restriction appears to address the issue.
- (g) In GC10/06 the Commission also reflected upon its approach to assessing opportunities for casino gambling. At paragraph 20, it stated that it sees merit in the view that "that opportunity is considered principally with the theoretical maximum level of permitted gambling activity, irrespective of the absolute or relative attractiveness or accessibility of these potential activities". This has been confirmed and reiterated in a number of subsequent decisions. For example, in GC24/11 the Commission stated:

The Commission's thinking on this issue is well settled. An increase in opportunities for casino gambling involves an increase in the theoretically available maximum level of activity. It differs from an increase in the attractiveness or accessibility of currently available opportunities for gambling, and it is not to be confused with the maximisation of realisation of existing activities, nor with what activity actually takes place.

- (h) As SCML suggests, applying the Commission's theoretical approach to the current proposal suggests that any distinction between frontline and back-betting positions with regard to the opportunities they present should be viewed as minimal. It is true that frontline positions present gambling opportunities that players will utilise more often, and could even be described as being more attractive. In terms of theoretically available opportunities, both types of position are virtually equivalent. All back-betting and frontline players can make the same wagers. The only constraint on back-betting is the ability to play the cards; back-bettors cannot choose when to hold, split, and so forth. However if a patron chooses to gamble in either manner, equivalent opportunities to gamble exist in a wagering sense.
- (i) However, the Commission has also made clear the importance of taking an "in the round" approach when assessing opportunities for casino gambling. This statement has always been coupled with the fact that the (arithmetic) "opportunity" figures are never determinative, but rather an aide in its consideration.
- (j) He is less convinced that SCML's proposal will not create the potential for an increase in opportunities for casino gambling when an in the round approach is applied to the current application.
- (k) He has produced some additional information that the Commission might find helpful in making its in the round assessment. Game mix 1, the benchmark game mix for the Hamilton casino, provides up to 464 total player spaces. Of these spaces, up to 242 are frontline positions, with 222 being back-betting.
- (l) He has considered what could happen if SCML's logic were to be applied to other game mix applications in the future. For instance, what precedent would the Commission's approval of this application set with regard to future game mix applications that involve additional frontline positions in substitution for back-betting positions? And how far can this logic extend?
- (m) An extreme hypothetical example would be if SCML were to apply to remove or restrict all back-betting positions on a given game mix (an example would be Game mix 1 for the Hamilton casino) in substitution for the introduction of up to 231 additional electronic terminals to be appended to the 23 table games.
- (n) An even more extreme example would be if this logic were extended to the Auckland casino. If SCML proposed to remove all of the back-betting positions on the Auckland benchmark game mix, for example, would this allow for the

introduction of an additional 1072 frontline positions or, more likely, electronic terminals attached to table games?

- (o) There is a current trend in casino table games towards an increase in electronic products. Often, as with Electronic Roulette, these terminals can be attached to “manual” tables. The addition of electronic terminals to manual tables is an obvious candidate for the seamless swapping of back-betting with frontline positions.
- (p) It is questionable whether such an extreme hypothetical scenario is in line with the intent of sections 11 and 12 of the Act. To this end, this application should be considered in the light of potential future applications. Despite the Commission's previous statements, would the conversion of half of the identified player spaces in a given benchmark to more accessible opportunities be an appropriate outcome?
- (q) This application is considered unique in the Commission's experience of assessing increases in opportunities and making in the round assessments. As well as, or instead of, disaggregating tables into their constituent wagering spaces, it may also be appropriate for the Commission to consider the aggregate opportunities a table represents in a given benchmark as part of making the in the round assessment.
- (r) With respect to the specifics of this application, he has produced further calculations relating to the current application that may aide the Commission. For example, game mix 8 provides for up to 457 total player spaces, 259 of which are frontline. Game mix 8 therefore has 17 more frontline player spaces than the benchmark game mix.
- (s) While the current application seeks to restrict only two tables and may lend itself to an “in the round” assessment that opportunities would not increase, later applications through “precedent creep” or otherwise may be more dramatic.

SCML's submissions in reply

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

- (a) Its proposal will not increase opportunities for casino gambling using the arithmetic model that has traditionally been used by the Commission to aid with its deliberations. The Secretary acknowledged as much in his submissions.



- (b) The Commission has on occasion expressed a preference for an overall “in the round” assessment of increases in opportunities, which has regard to, but is not necessarily determined by, the arithmetic model. In reliance on this, the Secretary suggested that when calculating the number of player spaces, there should be a distinction between frontline and back-betting positions.
- (c) The Secretary notes that the 10 new game mixes for which approval is sought have more frontline positions than the regulatory benchmark, with game mix 8 featuring an increase of 17 such spaces. The Secretary has not submitted that any of these game mixes reflect an increase in casino gambling opportunities and in fact has suggested that an “in the round” assessment may lend itself to the view that opportunities would not increase. In this sense it seems that the Secretary has no particular view on whether the current application would lead to an increase in casino gambling opportunities.
- (d) However the Secretary notes that the same methodology could be used in a subsequent application to generate a significant increase in the number of (frontline) electronic table game terminals at a casino, by restricting or removing all back-betting positions on a given game mix. The Secretary questioned whether such a mass substitution would be consistent with the intent of sections 11 and 12.
- (e) This application should be assessed on its own merits, in accordance with the statutory criteria. It would be quite inappropriate for the Commission, in the exercise of its discretion under section 139 of the Act, to take a more restrictive approach than the particular circumstances warrant for the purpose of avoiding a precedent for the future.
- (f) The Secretary’s extreme hypothetical examples do not exist. The issue is not whether the mass substitution of one wagering opportunity for another would give rise to regulatory concerns, but whether the installation of 18 additional Electronic Roulette terminals in conjunction with a reduction in the corresponding number of players permitted to wager on any one wagering area on two games of Black Jack meet the section 139(2) criteria. Its submission is that they do.
- (g) The Commission first raised the question whether there should be any distinction between frontline player spaces and back-betting positions in GC29/05. It invited the applicant and the Secretary to address this issue “in the future, if relevant”. The question was not considered to have any bearing on that particular decision, which allowed for a Rapid Roulette game with 20 frontline terminals to replace a



Black Jack game with 7 frontline positions and 14 back-betting positions. The Commission determined that no increase in opportunities for casino gambling would result.

- (h) The Secretary seems to be suggesting that an increase in the number of frontline positions relative to back-betting positions (and in excess of the frontline benchmark number) can, of itself, constitute an increase in opportunities for casino gambling because frontline positions are more accessible. It has not been established that frontline positions are more attractive to patrons than back-betting positions. But even if they were, this cannot, in principle, constitute an increase in gambling opportunities within sections 11 and 12 of the Act, regardless of the level of substitution, for the following reasons:

- (i) This is at odds with the Commission's long-standing view that the accessibility or attractiveness of a gambling activity is not an opportunity. The Commission has decided many applications on this basis, including cases involving an increase in frontline positions. In GC10/06, the game mix application proposed limiting the number of back-betting positions at Midi Baccarat in return for more frontline spaces at Poker. Even though SCML acknowledged that the change was intended to encourage more players to gamble at the comfort of a seat at the table, and that the frontline positions were considered to be more attractive and accessible (and therefore more likely to be utilised), the Commission did not consider that this constituted an increase in opportunities, stating:

... opportunity is concerned principally with the theoretical maximum level of permitted gambling activity, *irrespective of the absolute or relative attractiveness or accessibility of these potential activities.*
(Emphasis added)

The Commission noted that although it had, in its early decisions, left open the question whether "opportunities" could be increased by removing physical constraints, it had since changed its view on accessibility, largely following Court evidence given by Dr Delfabbro (discussed further below).

- (ii) The Commission has repeated this principle many times in the context of other cases involving different kinds of increases in the accessibility and attractiveness of games. In GC25/08, the Commission also emphasised that Parliament did not intend to constrain growth in *gambling per se* or in *gambling turnover*, stating:

It did not intend to prevent casino operators from maximising the use of the opportunities which already existed, as opposed to increasing the opportunities themselves.

- (iii) More recently, in GC24/11, the Commission noted that its thinking on this issue is “*well settled*”:

An increase in opportunities for casino gambling involves an increase in the theoretically available maximum level of activity. It *differs from an increase in the attractiveness or accessibility of currently available opportunities for gambling*, and it is not to be confused with the maximisation or realisation of existing activities, nor with what activity actually takes place. (Emphasis added)

- (iv) As the Commission noted in GC25/08, the distinction between “*opportunities*” and “*accessibility*” or “*attractiveness*” was advanced by the Commission and upheld by the Court of Appeal in *SkyCity Auckland Ltd v Gambling Commission*. The Commission relied on an affidavit from Dr Delfabbro which stated:

12. Opportunity is a theoretical construct which is concerned with the *potential* (the maximum possible) for gambling consumption rather than with actual gambling consumption. Opportunity concerns what is available for potential consumption, not what is actually consumed in particular circumstances. *I would distinguish opportunity from accessibility which, I consider, is concerned with a person's ability or desire to utilise opportunity. Gambling is more accessible where people have to overcome fewer impediments (physical, cultural, social or financial) in order to engage in the activity.* (Emphasis added)

- (v) The approach suggested by the Secretary would be inconsistent with the proper interpretation of section 12(2)(c) of the Act, which refers to “total player space at table games”. There is no distinction drawn between the number of frontline spaces and the number of back-betting spaces. The words “total player space at table games” was clearly regarded by the Court of Appeal in the *SKYCITY* case as referring to total player positions at table games. To add the distinction now urged by the Secretary would, in effect, be to rewrite the words of section 12 of the Act.
- (vi) It is correct that the Commission has, as the Secretary says, preferred to assess increases in opportunities “in the round”, rather than to be constrained by an arithmetic formula or model. That, however, is in the context of quantifying the increase in opportunities. The question whether something is an “opportunity” for casino gambling at all is a separate, preliminary question. If it is not an opportunity there is no quantification required – in the round or otherwise. Whether something is an opportunity is always judged by reference to the Commission’s “well-

settled" definition; namely the theoretically available maximum level of gambling activity. If it is outside that definition – as accessibility and attractiveness have been held to be – it cannot be part of the "in the round" assessment of increases. There is accordingly no place in the model for a distinction between the number of frontline and the number of back-betting positions. The Secretary's approach misunderstands this.

- (vii) The substitution of more accessible frontline positions for back-betting positions cannot therefore constitute an increase in opportunities within sections 11 and 12, whether the substitution is of one or many positions. The extreme "mass substitution" examples postulated by the Secretary cannot change that.
- (j) In the *SKYCITY* case, the Court of Appeal did not make a definitive ruling on the exact ambit of section 12 in terms of placing a finite limit on the factors the Commission could consider in individual cases. But that did not mean there was no limit. The Court of Appeal stressed that the Commission was obliged to apply the correct "statutory test" to the facts. The statutory definition does not cover accessibility/attractiveness, or increases in gambling or turnover *per se*, for reasons outlined above, and as the Commission has repeatedly recognised in its rulings over many years.
- (k) The current application would enhance the visibility of some gambling opportunities in Hamilton (ie electronic roulette terminals) which would be offset by the less visible but nonetheless real restrictions on the number of persons permitted to wager on some Black Jack games. Regardless of the popularity of such a change it would not increase casino gambling opportunities.
- (l) That is not to say that a change in frontline and back-betting positions is otherwise irrelevant to a game mix application. If the new game mix leads to an increase in the maximum rate of play, that may constitute an increase in gambling opportunities that should be factored in "in the round". These matters have been factored into the current application.
- (m) The Secretary's submission acknowledges that SCML's proposal to have clear markings on the tables noting the back-betting restriction should address any compliance and enforcement issues.
- (n) The proposed changes to the mix of games will not impact its efforts to prevent and minimise the harm caused by gambling, including problem gambling.



Analysis

7. This application raises the issue of how the Commission should approach section 12, which confers on it the statutory function of determining whether or not something constitutes an increase in the opportunities for casino gambling.
8. Both SCML and the Secretary start from a common position; namely that those provisions of the Act are expressly concerned with increases in opportunities for casino gambling rather than with increases in gambling activity or turnover, and that opportunity conveys the idea of what is possible rather than what might be attractive or currently practised. Both parties cite the same passage from decision GC24/11. The difference between them concerns how the Commission should assess different opportunities.
9. SCML's submissions not only emphasise the difference between opportunity and attractiveness of opportunity, but go on to urge an arithmetical assessment of opportunity, in which all opportunities are assumed to be the same. Heavy reliance is placed upon a series of arithmetical calculations of opportunity as if they determined the outcome.
10. The Secretary, in contrast, accepted that the arithmetical calculations were correct as far as they went but pointed out that the Commission had consistently held that such calculations were not determinative and that the Commission reached its view on whether or not something constituted an increase on the basis of an overall or "in the round" assessment. The Secretary pointed out that, when the Commission had allowed the limited offsetting of back-betting positions for front-betting positions in decision GC10/06, it had indicated that the same approach would not necessarily be taken in all circumstances, thus indicating that all player spaces, including front-betting and back-betting positions, may not be considered as effectively offering an equivalent opportunity in all circumstances.
11. In addition to being correct about the non-determinative nature of opportunity calculations (and the Commission has set out in detail in previous decisions the reasons that such calculations are of fairly limited value), the Secretary was right to raise the possible consequences of applying the Commission's previous statements about the theoretical nature of its usual approach to assessing opportunity without regard for the overall purpose of its assessment. The "theoretical maximum" concept is one which the Commission developed to help it to answer a statutory test correctly, but it must be remembered that those guiding ideas or principles are not themselves the statutory test. Accordingly, the Commission must remain alert to unintended consequences of too strict an application of a guiding principle to a particular determination. The Commission is required to decide whether contemplated game mix changes would lead overall to an increase in the opportunities for casino gambling. If the apparently logical application of



one of its guiding principles produced a negative answer but the Commission concluded that, as a matter of common sense and overall impression, the result would constitute an increase in opportunities for casino gambling, the Commission would examine and, if necessary, modify the earlier expressions of its approach so as to ensure that the statutory test was correctly answered. A recent example of it doing so can be seen in decision GC39/12, in which the Commission declined a proposal to permit the introduction of Keno at the Auckland casino without offsetting opportunity elsewhere, which had been advanced on the basis that such an approval would be a logical application of the theoretical maximum concept.

12. The Secretary was accordingly correct to raise the potential consequences of an unrestrained application of the approach advanced by SCML, even though it was based on prior statements by the Commission, and to remind the Commission that section 12 determinations are overall or "in the round" assessments of whether the proposed changes provide equivalent (or, to adopt the terminology used in section 12, "proportionate") opportunities to the current conditions. This is not necessarily answered, as SCML suggests, by adopting a principle that all opportunities are the same and can therefore simply be counted. The issue is not whether or not something is an opportunity, as SCML suggests, as it appears to be common ground that a player space is an opportunity, but whether one form of opportunity is proportionate to another, the assessment of which is not a matter of simple arithmetic.
13. Most of the proposed changes involve increasing the fixed number of terminals at a single table game; Electronic Roulette, a game which is limited at the Hamilton casino to terminal play (ie with no provision for the manual placement of bets), without reduction elsewhere in game mixes 5, 6 and 7 (on the basis that, overall, the opportunities offered by those mixes are below those offered by game mix 1) and with a reduction in the permitted player positions at two tables of another table game, Black Jack, in game mixes 8, 9 and 10. The remaining changes (game mixes 11, 12, 13 and 14) are more difficult to assess as they involve more changes to more games, including an increase in the number of (manual) Roulette games (the rules for which do not limit the maximum number of players) compared to all game mixes except game mix 1. All of the latter proposed game mixes however provide far fewer tables of Black Jack compared to game mix 1 and also provide for two tables of Poker and one of Money Wheel whereas game mix 1 contains none. The Commission has taken into account the nature of the games reduced and added, as well as the number of player positions (and whether they are fixed by the game rules) in each game mix in reaching a conclusion overall that none of the proposed game mixes would increase the opportunities for casino gambling in this case.



14. It has considered the similarities and differences between the present case and the situation in decision GC10/06. Although the Hamilton casino is larger than in that case, both applications involved a relatively small number of back-betting player spaces being reduced to allow an increase in player spaces at a few other table games. A key consideration for the Commission has been that, like decision GC10/06, the proposed changes involve player spaces only, with no increase in the number of tables or gaming machines. There should be no concern about “precedent creep”. This decision relates to the particular circumstances of the application, including its scale, and is not to be taken as endorsing the SCML submission that no substitution of player spaces can ever constitute an increase in the opportunities for casino gambling regardless of scale or differences between the type of player spaces.
15. The Commission was initially troubled by two differences between this application and that in decision GC10/06: the fact that there was not only a history of playing the restricted mode game at the casino but that the restriction was not to apply to all such games but only to 2 tables (of up to 12). The Commission has previously expressed concern about the imposition of limited restrictions for reasons related to complexity, customer confusion and difficulties with compliance and enforcement. However, the Commission has taken into account the Secretary’s submission that the requirement to mark each table layout with the specific betting restriction addresses his concerns in that regard and, as a result, is prepared to approve the game mixes.

Decision

16. The Commission approved the new game mixes under condition 9 of SCML’s operator’s licence for the Hamilton casino. Annex A is **attached**.

Right of appeal

17. 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

| March 2013

ANNEX A

Pursuant to condition 9 the following game mixes may be operated by the Licence Holder on casino gaming tables in accordance with approved floor plans subject to the following conditions and requirements:

1. Black Jack/Pontoon – up to 11 games
Roulette – up to 5 games
Midi Baccarat – up to 3 games
Mini Baccarat – up to 1 game
Caribbean Stud Poker – up to 2 games
Tai Sai (single sided) – up to 1 game
2. Black Jack/Pontoon – up to 10 games
Roulette – up to 4 games
Midi Baccarat – up to 3 games
Mini Baccarat – up to 1 game
Caribbean Stud Poker – up to 1 game
Money Wheel (single sided) – up to 1 game
Poker – up to 2 games
Electronic Roulette (12 players) – up to 1 game
3. Black Jack/Pontoon – up to 12 games
Roulette – up to 4 games
Midi Baccarat – up to 2 games
Caribbean Stud Poker – up to 1 game
Money Wheel (single sided) – up to 1 game
Poker – up to 2 games
Electronic Roulette (12 players) – up to 1 game
4. Black Jack/Pontoon – up to 10 games
Roulette – up to 4 games
Midi Baccarat – up to 4 games
Caribbean Stud Poker – up to 1 game
Money Wheel (single sided) – up to 1 game
Poker – up to 2 games
Electronic Roulette (12 players) – up to 1 game
5. Black Jack/Pontoon – up to 10 games
Roulette – up to 4 games
Midi Baccarat – up to 4 games
Caribbean Stud Poker – up to 1 game
Money Wheel (single sided) – up to 1 game
Poker – up to 2 games
Electronic Roulette (up to 23 players) – up to 1 game
6. Black Jack/Pontoon – up to 12 games
Roulette – up to 4 games
Midi Baccarat – up to 2 games
Caribbean Stud Poker – up to 1 game
Money Wheel (single sided) – up to 1 game
Poker – up to 2 games
Electronic Roulette (23 players) – up to 1 game



7. Black Jack/Pontoon – up to 10 games
Roulette – up to 4 games
Midi Baccarat – up to 3 games
Mini Baccarat – up to 1 game
Caribbean Stud Poker – up to 1 game
Money Wheel (single sided) – up to 1 game
Poker – up to 2 games
Electronic Roulette (23 players) – up to 1 game
8. Black Jack/Pontoon – up to 8 games
Black Jack/Pontoon (restricted options) – up to 2 games
Roulette – up to 4 games
Midi Baccarat – up to 4 games
Caribbean Stud Poker – up to 1 game
Money Wheel (single sided) – up to 1 game
Poker – up to 2 games
Electronic Roulette (up to 30 players) – up to 1 game
9. Black Jack/Pontoon – up to 10 games
Black Jack/Pontoon (restricted options) – up to 2 games
Roulette – up to 4 games
Midi Baccarat – up to 2 games
Caribbean Stud Poker – up to 1 game
Money Wheel (single sided) – up to 1 game
Poker – up to 2 games
Electronic Roulette (30 players) – up to 1 game
10. Black Jack/Pontoon – up to 8 games
Black Jack/Pontoon (restricted options) – up to 2 games
Roulette – up to 4 games
Midi Baccarat – up to 3 games
Mini Baccarat – up to 1 game
Caribbean Stud Poker – up to 1 game
Money Wheel (single sided) – up to 1 game
Poker – up to 2 games
Electronic Roulette (30 players) – up to 1 game
11. Black Jack/Pontoon – up to 6 games
Black Jack/Pontoon (restricted options) – up to 2 games
Roulette – up to 5 games
Midi Baccarat – up to 5 games
Caribbean Stud Poker – up to 1 game
Money Wheel (single sided) – up to 1 game
Poker – up to 2 games
Electronic Roulette (up to 23 players) – up to 1 game
12. Black Jack/Pontoon – up to 5 games
Black Jack/Pontoon (restricted options) – up to 2 games
Roulette – up to 5 games
Midi Baccarat – up to 5 games
Mini Baccarat – up to 1 game
Caribbean Stud Poker – up to 1 game
Money Wheel (single sided) – up to 1 game
Poker – up to 2 games
Electronic Roulette (up to 23 players) – up to 1 game



13. Black Jack/Pontoon – up to 6 games
Black Jack/Pontoon (restricted options) – up to 2 games
Roulette – up to 5 games
Midi Baccarat – up to 5 games
Caribbean Stud Poker – up to 1 game
Money Wheel (single sided) – up to 1 game
Poker – up to 2 games
Electronic Roulette (up to 30 players) – up to 1 game

14. Black Jack/Pontoon – up to 5 games
Black Jack/Pontoon (restricted options) – up to 2 games
Roulette – up to 5 games
Midi Baccarat – up to 5 games
Mini Baccarat – up to 1 game
Caribbean Stud Poker – up to 1 game
Money Wheel (single sided) – up to 1 game
Poker – up to 2 games
Electronic Roulette (up to 30 players) – up to 1 game

Notes

1. The Licence Holder is permitted to change between game mixes 11 and 12 and 13 and 14 subject only to any requirements specified by way of Minimum Operating Standards. The Licence Holder is permitted to change between other approved table game mixes subject to providing the Inspectorate with prior notice.
2. The Licence Holder is permitted to operate automatic shufflers on the Caribbean Stud Poker and Poker tables specified and on no more than 50% of Black Jack games specified.
3. The Licence Holder is permitted to conduct two alternative Poker games – Hold-em and Omaha.
4. Where Black Jack/Pontoon are subject to restricted wagering options, the Licence Holder shall permit up to 2 players only to wager on any 1 box and the layout shall be inscribed to this effect.
5. The Electronic Roulette table in game mixes 2-14 comprises up to the number of terminals specified in each game mix and no manual table.

