

**IN THE MATTER** of the Gambling Act 2003

**AND** on an application by **DUNEDIN CASINOS MANAGEMENT LIMITED** for approval of a new floor plan and game mixes

**BEFORE THE GAMBLING COMMISSION**

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

Date of Application: 1 December 2010

Date of Decision: 18 February, 13 May 2011

Date of Notification of Decision: 16 June 2011

**DECISION ON AN APPLICATION BY DUNEDIN CASINOS MANAGEMENT LIMITED FOR APPROVAL OF A NEW FLOOR PLAN AND NEW GAME MIXES**

**Introduction**

1. Dunedin Casinos Management Limited (the “**Applicant**” or “**DCML**”) applied to the Commission for approval:
  - (a) of a new Annex A, with game mixes A-I, under condition 9 of DCML’s operator’s licence; and
  - (b) of a new floor plan, under conditions 11 and 12 of DCML’s operator’s licence.

**Licence conditions**

2. The relevant licence conditions are as follows:

**DCML’s operator’s licence**

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.
11. The Licence Holder shall operate in accordance with approved floor layouts showing the position of gaming tables and gaming machines.
12. The Licence Holder shall obtain the approval of the Commission for new floor plans prior to relocating or installing tables or machines in positions not specified in approved floor layouts. When applying, the Licence Holder must submit fresh plans showing the floor layout for the Gambling Area and



details of the proposed CCTV layout for the consideration of the Commission. Any change must comply with the Surveillance Standard.

### **Applicant's submissions**

3. The Applicant stated that:

- (a) It wants to replace its existing approved floor plans with a new floor plan, and to introduce a new Annex, with game mixes A-I.
- (b) It has previously applied to the Commission for approval of new game mixes but, in doing so, had submitted now outdated rate of play and opportunities information. It now supports this application with current information derived from trials conducted by SKYCITY in 2009.
- (c) Applying the new information has resulted in an unintended consequence – three of its existing approved game mixes, L, O and S, now exceed its regulatory benchmark (that is, provide greater opportunities for casino gambling than its regulatory benchmark). As such, the Commission must reconsider the regulatory benchmark for the Dunedin casino.
- (d) It is of the view that it will be disadvantaged if its ability to operate existing game mixes L, O and S was impacted by the application of new theoretical data, particularly when nothing has physically changed within its operation.
- (e) The most appropriate solution is to look at what is currently permitted (game mixes A-S) and select the mix which provides the greatest number of opportunities to gamble after applying the new opportunities data. Game mix S permits the greatest opportunities and should become the new regulatory benchmark, as follows:

<b>Game mix</b>	<b>Opportunities</b>
A	7,252.5
B	5,865.75
C	5,311.5
D	6,968.25
E	6,414
F	6,144
G	5,589.75
H	7,246.5
I	6,692.25
J	6,422.25
K	5,868
L	2,524.75
M	6,970.5
N	5,859.75
O	7,516.5

Game mix	Opportunities
P	6,962.25
Q	5,727.85
R	6,830.25
S	7,932.75

- (f) By adopting game mix S as the new benchmark mix, the Commission cannot be increasing the opportunities to gamble as these opportunities already exist. Provided the Commission accepts this, it seeks approval of game mixes A-I (with game mix S becoming the new game mix A).
- (g) Dealing Style A will be used on all Baccarat games, and all of its Black Jack games are operated manually (that is, without automatic shufflers).
- (h) The proposed game mixes do not raise any issues of regulatory concern, and they all provide for fewer player spaces and/or opportunities to gamble than the (new) regulatory benchmark.
- (i) Provided the Commission accepts the new game mixes, it seeks approval of a new floor plan entitled "Dunedin Casino Gambling Floor Plan – Level 1 – Plan A". The new plan indicates the location of all casino tables and machines, and will replace the existing approved floor plans.
- (j) The proposed floor plan includes three flip-top tables that will operate in accordance with existing internal controls.

#### Secretary's submissions

4. The Secretary submitted, in summary, that:
- (a) He had no regulatory concerns regarding game mixes B-I. He has reviewed the calculations provided within DCML's application and agrees that they all provide fewer gambling opportunities than the current regulatory benchmark, game mix A.
- (b) He does not agree that game mix S should become the new regulatory benchmark. The regulatory benchmark should represent the casino gambling opportunities that were available on 19 September 2003, the date on which section 11 of the Gambling Act 2003 (the "Act") came into effect, and after which increases in opportunities were prohibited. The current regulatory benchmark is appropriate and a far more accurate representation of the gambling opportunities that were available at the Dunedin casino on 19 September 2003.
- (c) If the opportunities for casino gambling have inadvertently been increased since the implementation of the Act, owing to a previous lack of accurate and robust



data, the Commission should now correct any errors made apparent since the improved data has become available.

- (d) Some of the game mixes currently pending the Commission's approval, and previously applied for by DCML in September 2010, may be similarly questionable with regard to increased gambling opportunities.
- (e) However he acknowledges that the Commission's analysis of whether a game mix constitutes an increase in the opportunities for casino gambling may depend on the way in which the rate of play data is applied. DCML has applied the dealing Style A rate of play data to all Midi Baccarat tables for the regulatory benchmark and in all subsequent game mixes, and the application of this assumption to the calculation indicates that some of DCML's approved game mixes provide more calculated gambling opportunities compared to the benchmark.
- (f) In contrast, if DCML had applied the rate of play data similar to the "version 3" data described in decision GC17/10, it would appear that none of DCML's approved game mixes would provide more calculated gambling opportunities than the regulatory benchmark game mix.

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

5. In reply, DCML submitted, in summary, that:

- (a) By way of clarification, it is seeking approval of one floor plan only and no longer seeks approval of the floor plans or game mixes it submitted to the Commission in September 2010.
- (b) It invites the Commission to reconsider its regulatory benchmark to ensure that it accurately reflects what DCML had available on 19 September 2003. In the event that the Commission accepts that the benchmark should be revised, the current applications will be able to proceed. Should the Commission decide that the existing game mix A is the benchmark, it applies to set game mix S as the new regulatory benchmark. This is because game mix S is already approved and provides the greatest number of opportunities to gamble.
- (c) It does not support the "version 3" scenario described by the Secretary. This would require at least 50% of open Baccarat games to be dealt using Style B. This is not practical in a smaller casino environment. It would also deny it gambling opportunities that it was previously entitled to.



- (d) In decision GC17/10, SKYCITY presented a new body of data relating to rates of play on table games. When it applied this new data to the already approved game mixes, it found that the total number of opportunities to gamble for the benchmark game mix increased, but were exceeded by three other approved game mixes that increased even further. This situation was not anticipated when the trial data was put forward and necessitates the reconsideration of DCML's benchmark. This is a significant matter for DCML given that the opportunities for casino gambling cannot be increased above what was in place when the Act took effect on 19 September 2003.
- (e) In decision GC03/10, the Commission determined the benchmark that will apply for Dunedin casino and against which all future game mix applications will be compared. During submissions on this benchmark calculation, DCML relied on the data that was available at that point in time. It seems reasonable that, if the data that was used in setting the benchmark was less accurate and less robust, then the arguments put forward by DCML during the process of setting DCML's benchmark would also have been different. This is particularly relevant given that DCML received approval from the Casino Control Authority to "flip" tables into different games.
- (f) Prior to the setting of the regulatory benchmark, it would have had no problem operating at least four "Style A" Baccarat games. It is disappointing to see it is now faced with a possibility that some approved game mixes may no longer be permitted.
- (g) At the time of the decision to set DCML's regulatory benchmark, it had no concerns because Black Jack games were considered to provide the greatest number of opportunities to gamble. It appears now that a key point requiring clarification is whether or not DCML was permitted, prior to 19 September 2003, to flip a selection of its table games at its discretion. If this is accepted, then the regulatory benchmark for DCML will contain more Baccarat games.
- (h) In paragraph 34 of decision GC03/10, the Commission states that "DCML's maximum gambling opportunities should be represented by what was available to it, rather than what it availed itself of." It is therefore appropriate for the Commission to revisit the benchmark calculation to ensure that it represents what DCML had available as at 19 September 2003. Taking into account the new rates of play that have been accepted in decision GC17/10, DCML's benchmark game mix as at 19 September 2003 is most accurately reflected by the following table:



<b>Proposed regulatory benchmark Game mix A</b>	<b>Number of gambling opportunities</b>
3 American Roulette	1,008
7 Mini Baccarat	6,615
1 Midi Baccarat	1,215
1 Caribbean Stud Poker	84
<b>Total gambling opportunities</b>	<b>8,922</b>

- (i) This game mix accurately reflects the maximum number of gambling opportunities that it had at its disposal as at 19 September 2003.
- (j) Its current regulatory benchmark is below for comparison:

<b>Current regulatory benchmark Game mix A</b>	<b>Number of gambling opportunities</b>
3 American Roulette	1,008
6 Black Jack	4,000.5
1 Mini Baccarat	1,215
1 Midi Baccarat	945
1 Caribbean Stud Poker	84
<b>Total gambling opportunities</b>	<b>7,252.5</b>

- (k) If the Casino Control Authority intended to restrict which tables or games could be flipped, then this would have been documented, likely within the internal control itself and/or on approved floor plans. There is no such restriction nor is there any evidence to suggest there was any restriction.
- (l) The Secretary has previously confirmed that it understood DCML was able to flip six table games (see paragraph 48 of decision GC03/10).
- (m) It accepts that there was some confusion over the interpretation of the flip-top procedure, something that has since been clarified. But there is no disputing the fact that it was able to flip tables, at its discretion, provided the new game could be accommodated in accordance with the gazetted rules by the table shape.
- (n) This is a matter of significant importance to Dunedin's casino, especially given that under current legislation, New Zealand casino table game operations are confined in size to that provided by the regulatory benchmark.
- (o) It needs to be satisfied that its benchmark reflects what it had available to it as at 19 September 2003 and that the benchmark is calculated using robust and reliable data.
- (p) If there is a concern that a new body of data will one day present itself and the regulatory benchmark requires review once again, then perhaps this points to the inherent problems associated with including rates of play in gambling



opportunities calculations. The current approach to calculating gambling opportunities has turned what was a relatively simple comparison into what will be an ever-changing and onerous set of mathematical calculations.

### **Analysis**

6. As a preliminary point, both DCML and the Secretary made reference to an earlier application for approval of floor plans and game mixes. In reply, DCML clarified that it no longer seeks those approvals, and that its application dated 1 December 2010 is discrete.

#### *DCML's benchmark*

7. Although framed as an application for approval of new game mixes, DCML was, in substance, applying to increase the regulatory benchmark for the Dunedin casino. For the reasons set out below, the Commission considers that DCML's rationale for such an increase is illogical, and the benchmark for the Dunedin casino should remain at its current level.
8. The regulatory benchmark for the Dunedin casino was clarified and confirmed in decision GC03/10. The decision was reached following an exhaustive investigation and submission process, involving DCML and others, lasting several months. Commission Secretariat also undertook a great deal of its own investigative work to assist with the process to ensure that the Commission had the best available information to set DCML's benchmark.
9. Ultimately, for the reasons fully set out in the decision GC 03/10, the Commission concluded that DCML's benchmark game mix should be as follows:

- Roulette – 3 games
- Black Jack – 6 games
- Midi Baccarat – 1 game
- Mini Baccarat – 1 game
- Caribbean Stud Poker – 1 game

The conclusion was reached principally on the basis of an investigation of the regulatory history and, with the exception of the substitution of a game of Roulette for a table of Tai Sai/Money Wheel, to reflect a later and seemingly permanent change in the casino, did not involve any assessment of game speed or other aspects of opportunity.

10. DCML now wants the Commission to reconsider its benchmark following the presentation of new opportunities test data from SKYCITY. It seeks to change the benchmark because the application of the new data to DCML's existing approved game mixes results in three of DCML's approved game mixes appearing to offer more opportunities for casino gambling than its benchmark game mix. DCML wants game mix S to become its new



benchmark on the basis that it is the approved game mix that offers the most opportunities for casino gambling.

11. The Commission does not concur. Section 11 of the Act, which prohibits increasing the opportunities for casino gambling, came into effect on 19 September 2003. The powers of the Commission to approve changes in the regulatory controls on casino operations have been similarly limited. There is a prohibition on increasing opportunities for casino gambling but no restriction on reducing them. While the Act does not provide a right to maintain a particular level of opportunity, the Commission has proceeded on the basis that, in controlling game mixes and other regulatory constraints on opportunity, it endeavours to set a benchmark mix which approximates the level of opportunity available when the statutory prohibition took effect, unless there is good reason to do otherwise. In reaching the decision in GC03/10, the Commission set a benchmark which, in its assessment, both addressed the current casino layout and reflected the September 2003 opportunity overall.
12. Game mix S (along with mixes L and O) was approved by the Commission in the same decision on the basis that it was then thought to offer fewer opportunities than DCML's regulatory benchmark (game mix A).
13. In approving game mix S, the Commission relied on opportunities information which it then had. DCML is therefore asking the Commission to increase its regulatory benchmark because an earlier assessment was based on information which needs revision. While it is arguable that, because it earlier approved game mix S, adopting game mix S now as the new benchmark would not technically breach section 11, the Commission considers that such a course of action would be illogical and wrong in principle - if the past assessment is found to be wrong, it is the assessment which should change, not the measure.
14. DCML's submission that it would have made different submissions on what constitutes its benchmark game mix had it known about the new rate of play data does not withstand scrutiny. In decision GC03/10, the Commission started with its assessment of the opportunities permitted on 19 September 2003. The sole change was to allow for the later increase in the number of American Roulette tables with an offsetting reduction of a Tai Sai/Money Wheel table. That substitution was done long ago and is not affected by the SKYCITY test data. Decision GC03/10 also took into account the existence of table-flipping procedures. The Commission declines to revisit the same arguments which it rejected in GC 03/10.



15. The benchmark game mix should not change for the reasons advanced by DCML. Setting game mix A as the regulatory benchmark was the result of a full investigation and careful assessment. The present submissions provide no justification for revisiting that assessment.
16. The Commission compared game mixes L, O and S with game mix A, but was not satisfied that they would not increase opportunities for casino gambling. While these mixes were previously approved by the Commission, that approval was based upon what now appears to be an erroneous assessment. The Commission is not, therefore, prepared to allow these earlier approvals to continue.
17. DCML does not seek approval for game mixes L and O, so they will drop away as they are not included in the proposed Annex A. The Commission will no longer approve game mix S.

#### *Automatic shufflers*

18. DCML submitted that it does not offer automatic shufflers on its Black Jack tables, and prepared its opportunities calculations accordingly. However DCML has overlooked the fact that all casinos in the country were entitled to deploy automatic shufflers on up to 50% of their open Black Jack tables on 19 September 2003. Casinos were permitted to do so following a 2001 approval by the CCA. When comparing a proposal with the benchmark, DCML should assume that its game mixes (including the benchmark mix) deploy automatic shufflers on up to 50% of its open Black Jack tables, regardless of whether DCML actually deploys them.
19. It is open to DCML to apply to use automatic shufflers on all of its operational (ie, non-regulatory benchmark) game mixes, as both Christchurch and Auckland casinos have done. In doing so, however, DCML will need to satisfy the Commission that the increased opportunities provided by the shufflers will be offset by the removal of opportunities from elsewhere in the proposal.

#### *Dealing Style*

20. DCML submitted that it intended to apply dealing Style A to its Midi and Mini Baccarat tables, despite the Secretary's suggestion that DCML might choose to limit itself to Style B in its operational mixes. In making this submission DCML has misunderstood the Secretary's submission which was aimed at assisting DCML. That is, if DCML chose to limit its Midi Baccarat tables to dealing Style B on its operational game mixes, it may still be able to deploy game mixes L, O and S since dealing Style B is slower than dealing Style A.

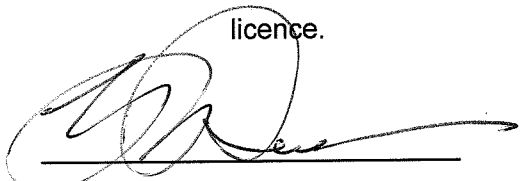


*Comparison of Game Mixes*

21. The Commission compared proposed game mixes B-I with game mix A, and concluded, in the round, that they would not increase opportunities for casino gambling. In reaching this conclusion, the Commission repeats comments it has made previously - assessment is not an arithmetical comparison based on calculations set out in the summary of submissions. The Commission compares a proposal with the benchmark and forms a view in the round on whether the proposal will increase opportunities for casino gambling.
22. The floor plan proposed by DCML raises no issues of regulatory concern and is also approved.

**Decision**

23. The Commission:
- (a) approved the proposed floor plan (**attached**), under conditions 11 and 12 of DCML's operator's licence;
  - (b) approved a new Annex A (**attached**), under condition 9 of DCML's operator's licence.



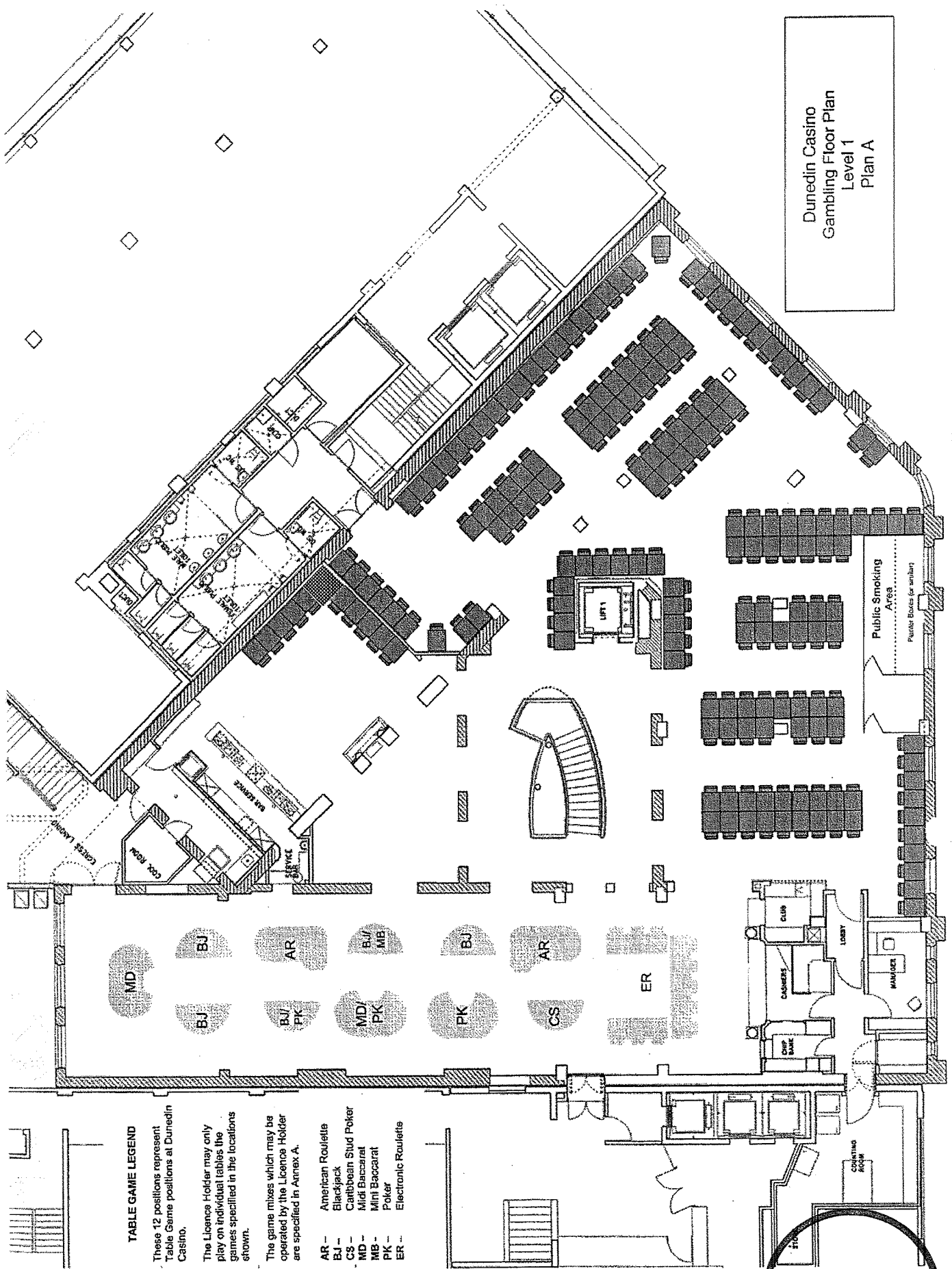
Graeme Reeves  
Chief Gambling Commissioner

for and on behalf of the  
Gambling Commission

16<sup>th</sup> June 2011



Dunedin Casino  
 Gambling Floor Plan  
 Level 1  
 Plan A



**TABLE GAME LEGEND**

These 12 positions represent Table Game positions at Dunedin Casino.

The Licence Holder may only play on individual tables the games specified in the locations shown.

The game mixes which may be operated by the Licence Holder are specified in Annex A.

- AR - American Roulette
- BJ - Blackjack
- CS - Caribbean Stud Poker
- MD - Mini Baccarat
- MB - Mini Baccarat
- PK - Poker
- ER - Electronic Roulette



## ANNEX A

Pursuant to condition 9 the following game mixes may be operated by the Licence Holder on casino gaming tables subject to the following conditions and requirements:

- A. Roulette – 3 games  
Black Jack – 6 games  
Midi Baccarat – 1 game  
Mini Baccarat – 1 game  
Caribbean Stud Poker – 1 game
  
- B. Roulette – 2 games  
Black Jack – 5 games  
Midi Baccarat – 2 games  
Caribbean Stud Poker – 1 game  
Poker (up to 10 player spaces) – 1 game  
Electronic Roulette (up to 11 player spaces and no manual table) – 1 game
  
- C. Roulette – 2 games  
Black Jack – 4 games  
Midi Baccarat – 1 game  
Caribbean Stud Poker – 1 game  
Poker (up to 10 player spaces) – 3 games  
Electronic Roulette (up to 11 player spaces and no manual table) – 1 game
  
- D. Roulette – 2 games  
Black Jack – 4 games  
Midi Baccarat – 2 games  
Caribbean Stud Poker – 1 game  
Poker (up to 10 player spaces) – 2 games  
Electronic Roulette (up to 11 player spaces and no manual table) – 1 game
  
- E. Roulette – 2 games  
Black Jack – 4 games  
Midi Baccarat – 2 games  
Mini Baccarat – 1 game  
Caribbean Stud Poker – 1 game  
Poker (up to 10 player spaces) – 1 game  
Electronic Roulette (up to 11 player spaces and no manual table) – 1 game
  
- F. Roulette – 2 games  
Black Jack – 3 games  
Midi Baccarat – 1 game  
Mini Baccarat – 1 game  
Caribbean Stud Poker – 1 game  
Poker (up to 10 player spaces) – 3 games  
Electronic Roulette (up to 11 player spaces and no manual table) – 1 game
  
- G. Roulette – 2 games  
Black Jack – 3 games  
Midi Baccarat – 2 games  
Mini Baccarat – 1 game  
Caribbean Stud Poker – 1 game  
Poker (up to 10 player spaces) – 2 games  
Electronic Roulette (up to 11 player spaces and no manual table) – 1 game



- H. Roulette – 2 games  
Black Jack – 4 games  
Midi Baccarat – 1 game  
Mini Baccarat – 1 game  
Caribbean Stud Poker – 1 game  
Poker (up to 10 player spaces) – 2 games  
Electronic Roulette (up to 11 player spaces and no manual table) – 1 game
- I. Roulette – 2 games  
Black Jack – 5 games  
Midi Baccarat – 1 game  
Caribbean Stud Poker – 1 game  
Poker (up to 10 player spaces) – 2 games  
Electronic Roulette (up to 11 player spaces and no manual table) – 1 game

### Notes

- (a) The Licence Holder must comply with the notification, and other, requirements specified in MOS C-C 1.12 when changing the game mix by “flipping” tables. Otherwise the Licence Holder is permitted to change between the above table game mixes, subject to providing the Inspectorate with a minimum of five working days notice in writing of its intention to do so.
- (b) For the avoidance of doubt, the Promotional Wheel may be used only for promotional purposes in accordance with the Act, and must not be used to conduct casino gambling.
- (c) The Licence Holder is permitted to operate automatic shufflers on no more than 50% of open Black Jack games specified in game mixes A-I.
- (d) The Licence Holder is permitted to change between the above table game mixes, subject to providing the Inspectorate with weekly advice of the table game mix to be used for the forthcoming week, and five working days notice of any change from one approved game mix to another.

