

**IN THE MATTER** of the Gambling Act 2003  
**AND** on an application by **SKYCITY CASINO MANAGEMENT LIMITED** to vary conditions attached to its operator's licence for the Auckland casino

**BEFORE THE GAMBLING COMMISSION**

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

Date of Application: 5 May 2011

Date of Decision: 15 July 2011

Date of Notification  
of Decision:  August 2011

**DECISION ON AN APPLICATION BY SKYCITY CASINO MANAGEMENT LIMITED  
TO VARY CONDITIONS ATTACHED TO ITS OPERATOR'S LICENCE  
FOR THE AUCKLAND CASINO**

**Introduction**

1. SKYCITY Casino Management Limited ("**SCML**") applied to the Commission, under section 139(1)(d) of the Gambling Act 2003 (the "**Act**"), to vary licence conditions 5, 6 and 6A of SCML's operator's licence for the Auckland casino. SCML has applied for the variation in order to increase the number of table games that it is permitted to have in the Gambling Area, and the number of gaming machines that it is permitted to have in the casino, but on the basis that there will be no increase in the number of table games or gaming machines that will be open for play at any given time.
2. SCML proposed two alternative variations, with Option 2 being its preference. The proposed conditions, with variations in mark-up, were as follows:

**Option 1**

5. The number of gaming machines in the Gambling Area Casino shall not exceed 1,647. Each terminal or player station of a multi-terminal or multi-player gaming machine shall be treated as one gaming machine.
6. The number of gaming tables in the Gambling Area shall not exceed 110, except as permitted by condition 6A or unless approved by the Commission. The Commission's approval may be subject to such conditions as the Commission may from time to time impose.



**Option 2**

5. The number of gaming machines in the Gambling Area ~~Casino~~ shall not exceed 1,647. Each terminal or player station of a multi-terminal or multi-player gaming machine shall be treated as one gaming machine.
  6. The Licence Holder The number of gaming tables in the Gambling Area shall not have more than 110 gaming tables open for play of table games in the Gambling Area while the casino is open for business exceed 110, except as permitted by condition 6A.
  - 6A. In addition to the gaming tables specified in condition 6, the Licence Holder may have install up to 8 further tables open for play ofen which casino type games may be played in the Gambling Area while the Casino is open for business, provided those tables are not used for gambling purposes and satisfy the following minimum requirements: ...
3. The Commission sought submissions on SCML's proposal from the Secretary for Internal Affairs (the "**Secretary**"), Problem Gambling Foundation ("**PGF**") and Gambling Helpline ("**GH**"), receiving submissions from all parties.

**Relevant sections of the Act and licence conditions**

4. The relevant sections of the Act are as follows:

**3. Purpose**

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) authorise some gambling and prohibit the rest; and
- (d) facilitate responsible gambling; and
- (e) ensure the integrity and fairness of games; and
- (f) limit opportunities for crime or dishonesty associated with gambling; and
- (g) ensure that money from gambling benefits the community; and
- (h) facilitate community involvement in decisions about the provision of gambling.

**11. No increase in casino gambling**

A person must not increase the opportunities for casino gambling.

**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 the 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).

## 5. The relevant licence conditions are as follows:

### SCML's operator's licence (Auckland)

- 5. The number of gaming machines in the Casino shall not exceed 1,647. Each terminal or player station of a multi-terminal or multi-player gaming machine shall be treated as one gaming machine.
- 6. The number of gaming tables in the Gambling Area shall not exceed 110, except as permitted by condition 6A.
- 6A. In addition to the gaming tables specified in condition 6, the Licence Holder may install up to 8 further tables on which casino type games may be played in the Gambling Area, provided those tables are not used for gambling purposes and satisfy the following minimum requirements:
  - (a) the layout cloths covering the tables shall bear an inscription to the effect, 'Fun Play Only – Not to be Used for Gambling';
  - (b) the tables may only provide for play on casino type games that form part of the approved game mixes specified in Annex A attached to this Licence;
  - (c) the tables shall not have drop boxes attached to them;
  - (d) the tables shall not have drop box slots for the placement of funds; the tables shall not be entered onto the SGM system or any replacement table management system.

7. The ratio of gaming machines to gaming tables in the Gambling Area, excluding the tables permitted by condition 6A, shall not exceed 15 to 1, except with the approval of the Commission.

### SCML's submissions

6. SCML submitted, in summary, as follows:

- (a) The Commission has approved a series of developments which will see an expansion to the Gambling Area on level 2 and new gambling areas opened on level 5. SCML wants to amend its licence conditions so that it may install additional tables and machines on the basis that no more than 1,647 gaming machines or 110 gaming tables would ever operate
- (b) Some of the gaming machines to be installed in the new area on level 2 will be purchased directly from manufacturers, rather than be relocated from other parts of the Gambling Area. The fact that it will be acquiring new machines means that there will be times when it will have in excess of 1,647 gaming machines in the casino, although no more than 1,647 machines will ever be open for play. The same situation is likely to occur on level 5.
- (c) The current restriction in condition 5 applies to the number of gaming machines that may be installed in the casino venue, whereas the corresponding restriction in condition 6 (applicable to tables) is specific to the Gambling Area. It is not aware of any reason for this distinction. The areas on levels 2 and 5 form part of the casino venue. In this sense, the installation of machines in these new areas in preparation for opening would be over and above the 1,647 gaming machines, and might represent a technical breach of current condition 5. It does not wish to remove gaming machines from operational parts of the casino until the new Gambling Areas are open for play. The proposed amendment to condition 5 (which is the same in both Options One and Two put forward by SCML) will enable it to manage the transition, while minimising operational implications.
- (d) It will activate the new Gambling Areas by providing the Commission with a minimum of 10 days notice in accordance with its licence conditions. It will align the notice period to the proposed opening time of the new Gambling Areas which will enable it to plan for the removal of machines from existing operational areas before the new designation(s) takes effect.
- (e) The installation of gaming tables into level 5 presents a different issue. All of the tables to be installed in both the south and north sides will be custom-built, rather than be relocated from other areas of the casino. As the restriction in licence

condition 6 is specific to the Gambling Area, SCML intends to align the notice period for activating the new Gambling Area(s) with the opening times of those areas. As the north and south sides will open at different times, it has applied to the Commission (separately) for approval to divide the Gambling Areas on level 5 so that the two areas may be activated at different times.

- (f) The south side of level 5, comprising eight tables, is expected to open on or around 15 July. A corresponding number of tables are scheduled to be removed from other parts of the casino prior to that date owing to space limitations created by building works to be undertaken on level 3. As a result, the opening of the south side should present no problems in terms of satisfying the requirements of existing condition 6. However, the opening of the north side presents some challenges. It is scheduled to open 22 tables in the north side of level 5 on 1 September 2011. These tables will replace the 15 tables currently located in the Pacific VIP area on level 3 and a further seven tables in other parts of the casino.
- (g) It wants to continue to operate its existing VIP area on level 3 and the seven tables in other parts of the casino up to the point when the north side of level 5 is opened for play. Just prior to that opening, it is proposing to close the 22 tables in the existing VIP area and associated locations. Aligning the opening of the new area with closure of the old area will mean that there is likely to be a period where SCML would have 132 tables in the Gambling Area (although no more than 110 would be operational). It is likely to need at least 24 hours to remove the 22 'redundant' tables from the Gambling Area to restore table numbers to 110.
- (h) The first option would enable the Commission to approve such an arrangement. Should the Commission decline Option 2, but approve Option 1, then pursuant to the amended condition it seeks Commission approval to have up to 132 gaming tables in the Gambling Area following the opening of the gambling area on the north side of level 5 on or around 1 September 2011. It proposes to remove 22 gaming tables from the Gambling Area (so that the total number of gaming tables in the Gambling Area is reduced to 110) within 24 hours of the opening of the north side level 5. During the period when there are more than 110 tables in the Gambling Area, it will not open more than 110 gaming tables for play. It will notify the DIA Inspectorate when the number of gaming tables in the Gambling Area exceeds 110, and immediately after the excess tables are removed. However, Option 1 is only a transitional arrangement. SCML prefers Option 2, which would allow it to have more than 110 tables in the Gambling Area on a permanent basis.

- (i) The four international salons on level 5 will house a total of 12 gaming tables. As these salons are designed specifically for international VIP players, and as international business tends to be sporadic, it anticipates that there will be significant periods where all 12 tables are not required for play. The downside of this arrangement is that it involves removing a large number of tables from general circulation.
- (j) With 12 tables located in the international salons and a further 18 tables in the wider VIP area, the public gambling areas of the casino will be reduced to 80 tables, nine fewer than the current number. During peak periods, there is expected to be demand for all 89 tables in the public Gambling Areas. In practical terms it would not be feasible to relocate tables from the international salons to the public Gambling Areas in order to accommodate this demand, even if approved floor plans were to provide that flexibility.
- (k) It may open and operate up to 110 tables at any one time. However the effect of condition 6, which limits the number of tables that may be installed in the Gambling Area is that, in circumstances where restricted parts of the Gambling Area housing tables are closed, it would not be in a position to operate its full complement of tables, notwithstanding the demand to do so.
- (l) It is evident that the restriction in condition 6 is designed to ensure that it does not operate more than 110 tables at any time. The same objective can be realised by the implementation of processes to ensure that no more than 110 tables may be operated at any time. In the event that it operated more than 110 tables, it would be in breach of section 11 of the Act.
- (m) It is proposing to install 12 additional gaming tables in the Gambling Area on levels 2/3 which could only be opened in circumstances where one or more of the four international salons were closed for gaming. Two of the salons will house two tables each, while the other two salons will house four tables each. Therefore when a salon housing two tables is closed, it could open two additional gaming tables on levels 2 or 3. Where a salon housing four tables was closed, it could open four additional tables on level 3, and so on up to a maximum of 12 tables where all four salons are closed.
- (n) Subject to Commission approval of the proposed variation to licence condition 6, it would make a further application to the Secretary to amend Minimum Operating Standards to formalise the processes that it would follow to ensure no more than 110 tables were ever opened.



- (o) The location of each of the “additional” tables installed on levels 2 or 3 would be notified to the DIA, and none of those tables would ever be operated unless one more of the international salons were closed. In this sense, it would be very easy for the DIA to confirm at any time that only 110 tables were open for play.
- (p) Further, all tables must be opened electronically on SCML’s gaming system before any games may be played. As a further safeguard, it has asked the vendors of its new gaming monitoring system scheduled for instalment in the casino in August, to create a parameter to set a maximum limit of tables that can be open at any one time.
- (q) The proposed variations are consistent with the requirements of section 139(2) of the Act.
- (r) In the event that the proposed variations to the conditions are approved, SCML will make an application for further variations to Annex A to accommodate the installation of additional tables and make similar applications in relation to floor plans.
- (s) Neither Option 1 nor Option 2 would increase the opportunities for casino gambling. Option 2 would restrict to 110 the maximum number of tables open for play. This would enable SCML to increase the number of gaming tables physically installed into the Gambling Area, as long as no more than 110 are open. There is no restriction in the licence conditions on the number of those tables that may be operated, but the intent of condition 6 is to ensure that it does not operate more than 110 tables at a time. The proposed amendment seeks to achieve this objective more directly and simply, by restricting only the number of gaming tables in operation.
- (t) On its proper interpretation, section 12(2)(b) is concerned with an increase in the number of table games *available* for gambling. In particular:
  - (i) What is prohibited under sections 11 and 12 is a net increase in “opportunities”. The Court of Appeal in *Skycity Auckland Ltd v Gambling Commission* [2008] 2 NZLR 182 said that an “opportunity” to gamble is a “chance or occasion” to gamble “offered by circumstances”. The Commission, in a number of its decisions, has noted that “opportunities for casino gambling are concerned with potential activity”.
  - (ii) Subsections (a) to (c) of section 12(2) contain a non-exhaustive list of matters that constitute an increase in opportunities for casino gambling.



The Court of Appeal was not asked to consider the issue now before the Commission. However, the Court of Appeal did recognise that the specific examples in subsections (a) to (c) are concerned with increases in the number of *games and player positions* (rather than items of physical equipment), whilst accepting that additional factors such as speed of play may be relevant.

(iii) Subsection (b) refers to “an increase in the number of table games ...”. What is intended must be an increase in the *availability for play* of table games, not merely an increase in the number of gaming tables physically installed:

- There are no express qualifying words to indicate that subsection (b) is intended to cover every increase in the number of gaming tables *physically installed*. Such a narrow and rigid interpretation cannot have been intended. An increase in the number of tables installed in the Gambling Area can increase the opportunities to gamble only if those additional tables are permitted to be open for play.
- This is consistent with the Court of Appeal's approach to the interpretation of section 12 and its view of the Commission's role. The test under section 12(2)(c) of whether there is an increase in the number of table games necessarily involves an element of judgement for the Commission.

(u) Commission decisions GC20/08 and GC31/08 are relevant. The Commission permitted the installation of eight Fun Play tables. The Commission considered the fact that the tables might not be used, or intended to be used, for gambling at any particular moment did not alter their status as gaming tables. The Commission therefore imposed restrictions under section 139 (by the addition of condition 6A) to ensure that the additional tables could only be used for “fun play” of “casino-type” games and not for gambling. The increase in the number of gaming tables was therefore not an increase in opportunities for casino gambling. In so deciding, the Commission implicitly accepted that section 12(2)(b) was to be interpreted in the manner suggested by SCML.

(v) The amended condition 6 will be similar to the restrictions imposed on Australian casinos. Condition 8(a) of the conditions of the casino licence for the Melbourne casino states, for example, that the casino “must have not less than 150 and not

more than 400 Gaming Tables in operation and available for the playing of Table Games, while the Melbourne Casino is open for business ...”.

- (w) With Option 1, it seeks to vary condition 6 by adding a further exception that would permit an increase in the number of gaming tables in the Gambling Area if approved by the Commission. This change is intended to address the transitional position only. This variation, if granted, also will not increase opportunities for casino gambling, for the following reasons:
- (i) The temporary increase in the number of tables installed (22 tables for approximately 24 hours only) is *de minimus* and can be approved as a temporary dispensation without infringing sections 11 and 12(2).
  - (ii) In addition, or alternatively, the Commission will have power, on granting its approval under the new condition 6, to impose further restrictions and conditions, including stipulating that the number of gaming tables open for play shall not exceed 110. The submissions above relating to the interpretation of section 12(2)(b) apply equally to this proposal.
- (x) SCML’s proposed variation to condition 5 (by substituting the words “Gambling Area” for “Casino”) will not constitute an increase in opportunities for casino gambling, because:
- (i) The variation seeks to correct an anomaly. The current reference to the “Casino Venue” rather than “Gambling Area is anomalous in that:
    - It is a “left-over” from the pre-2003 Act licence conditions, and is inconsistent with the restriction in condition 6 relating to table games.
    - Given that the intent of the 2003 Act is to limit gambling opportunities as discussed above, there is no justification for extending the restriction to the entire casino venue. Gambling is only permitted in the designated Gambling Area. There is no reason under the 2003 Act to have a condition restricting the number of gaming machines that are, for example, in storage or otherwise non-operational.
  - (ii) The number of gaming machines in the casino will temporarily increase for a brief transitional period, but there will be no increase in the number of

machines installed in the designated Gambling Areas. Nor will there at any stage be an increase in the number of gaming machines in operation.

### **The Secretary's submissions**

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

- (a) He supports the proposed variation to condition 5.
- (b) Whether the Option 1 amendment to condition 6 is approved relies in part on the approach the Commission takes to sections 11 and 12 issues. The existence of more than 110 tables, even for a short period, raises the same statutory interpretation issues as argued with respect to Option 2.
- (c) He is hesitant to support the Option 2 proposal, because section 12 provides that an increase includes "an increase in the number of gaming machines" and "an increase in the number of table games". He noted that section 12 makes no reference to whether or not the tables or machines are actually being operated.
- (d) He acknowledges that SCML's legal submission that the proposal will not increase opportunities if there is no increase in the number of tables available for gambling. He also acknowledges that this reasoning is consistent with that followed by the Commission in approving the deployment of Fun Play tables.
- (e) However, he is concerned that the proposal could increase the risk of an increase in opportunities for casino gambling. That is, currently more than 110 table games cannot be operated, simply because no more than 110 gaming tables are installed. If more than 110 tables were installed, then there would be a possibility of more than 110 tables being operated. However, he acknowledges that this risk would be reduced by the measures described in the application. If Option 2 were approved, he would work with the Applicant to ensure that safeguards are in place.
- (f) SCML has not explained why it considers it necessary to amend condition 6 in the way proposed. For simplicity, should the Commission accept SKYCITY's proposal, he would prefer condition 6 to read:

The number of gaming tables open for play in the Gambling Area shall not exceed 110, except as permitted by condition 6A.

- (g) SCML also stated that a consequential amendment to condition 6A will result. However it has not explained why this is necessary. He cannot see a need for any amendment.



**GH's submissions**

8. GH had no objection to either of the Option 1 or Option 2 variations.

**PGF's submissions**

9. PGF submitted, in summary, as follows:

- (a) It opposes Options 1 and 2. Its preferred alternative is a fuller and more specific version of Option 1, as follows:

6. The number of gaming tables in the Gambling Area shall not exceed 110, except as permitted by condition 6A or unless approved by the Commission on a short-term temporary basis. The Commission's approval shall be subject to such conditions as the Commission may from time to time impose, but shall include that any such approval shall not exceed one week in duration and that the Licence Holder shall not have more than 110 gaming tables open for play of table games.

- (b) This goes beyond the extra day the Applicant says it would need in order to reallocate the tables. It would also specify that no more than 110 tables would be in use at any time, a condition that the Applicant's submission makes it clear it intends to abide by.

- (c) Option 2 is opposed because it would result in a contravention of section 12 of the Act by increasing the opportunities for casino gambling for the following reasons:

- (i) By enabling the casino to have more tables than 110 in total available for use, and then have the flexibility of switching quickly from unused or less profitable main floor tables to take advantage of a temporary demand for high roller tables, and then to switch back again when high roller gambling ceases or reduces, Option 2 would increase the opportunities for, and sometimes the actual amount of casino gambling. The total amount of gambling that occurs will often be greater than that occurring without this ability to get more tables into use at any one time by switching tables, particularly to bring more high roller tables into play.
- (ii) A higher proportion of players will be high roller gambling. Because player losses are higher for high roller betting, there is a higher likelihood of gambling related harm.

**SCML's submissions in reply**

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

*Secretary's submissions*

- (a) The Secretary acknowledges that there is a strong legal argument that having more than 110 tables on the floor will not increase casino gambling opportunities provided no more than 110 tables are operated at any one time.
- (b) In its capacity as a licensed casino operator, it is faced with a number of obligations which present it with a range of risks that must be managed to ensure compliance. It is satisfied that it can suitably manage the risks highlighted by the Secretary.
- (c) It has no issue with the Secretary's preferred drafting of condition 6, in the event the variation is approved.
- (d) The consequential amendment proposed to condition 6A was designed to recognise that, with the variation to condition 6, the focus would move from the number of tables that may be installed to the number of tables that may be open. It has no objections if the wording in condition 6A is left as it is, but the use of the words "may install up to 8 further tables" does suggest that a specific number of tables have been installed under the auspices of condition 6, which would no longer be the case.

*PGF's submissions*

- (e) The PGF is opposed to the two options put forward, but has proposed an alternative version to the Option 1 variation as it relates to condition 6. PGF has not indicated whether it opposes or supports the proposed variation to condition 5. SCML would have no objections to the revised wording proposed by PGF for Option 1 of condition 6, in the sense that it would still enable it to manage the transitional arrangements associated with the move to level 5.
- (f) However Option 2 is its clear preference, which PGF opposes because, in PGF's view, it would contravene section 12 of the Act. Its original submissions have already addressed this issue at length, and it reiterates its view that increasing the number of tables that may be installed will not increase casino gambling opportunities.
- (g) It acknowledges that the proposed arrangement may increase gambling turnover, but that is not the same as increasing casino gambling opportunities.



## Analysis

11. SCML applied for alternative sets of variations to its licence conditions. Option 1 is a transitional option only and would provide a mechanism for SCML to have more than 110 gaming tables in the Gambling Area on a temporary basis. Option 2 would allow SCML to install more than 110 gaming tables permanently, but on the basis that the number of tables open for play at any given time would not exceed 110. As Option 2 is SCML's preference, the Commission considered that aspect of the application first.

### *Option 2*

12. The Commission first considered whether an increase in the number of gaming tables installed in the Gambling Area would increase opportunities for casino gambling, something that is prohibited by section 11 of the Act.
13. 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 or realisation of existing opportunities, nor with what activity actually takes place.
14. Section 12 of the Act provides three expressly non-exhaustive examples of increases in opportunities for casino gambling, with sub-section (2)(b) being applicable, as follows:
- (2) An increase in the opportunities for casino gambling includes but is not limited to –
    - (a) ...
    - (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.
15. Sub-section (b) does not expressly specify the ambit (whether by installation, availability or use) of the restriction on increasing the number of table games, so there is potential for ambiguity in relation to how it should be interpreted. This was borne out by the submissions with SCML submitting that subsection (b) permits an increase in the number of gaming table games installed, so long as the additional tables are not open for play, and the Secretary submitting that, on the face of it, the subsection applies whether or not the tables are actually being operated (although he stated that SCML's argument was worthy of consideration).
16. In the Commission's view, neither interpretation is correct. Measuring opportunity by what is actually open for play fails to take into account the fact that opportunity is concerned with potential activity, not actual activity. Conversely, measuring opportunity

by what is installed (without regard to whether it is capable of use) similarly lacks consistency with the concept that opportunity is concerned with potential activity. In the Commission's view, section 12(2)(b) refers to the number of tables on which play is permitted, rather than the number of tables installed in the Gambling Area or the number of tables open for play. This is because opportunity is not measured by what is open for play, but rather what may be open for play. The number of tables installed reflects opportunity only if they are all permitted to be open.

17. As the Commission noted in the Fun Play table decisions, GC20/08 and GC31/08, a table that is present, but on which patrons are not permitted to gamble, does not provide opportunities for casino gambling.
18. Section 12(2)(b) therefore contains an unstated assumption – that the table games referred to are all permitted for use. This represents the usual position as licence conditions restrict the number of tables which may be installed and thus available, but it is frequently the case that not all of these tables are in operation. This lack of deployment does not reduce the available opportunity, however, as opportunity is not measured by what is open for play, but what may be open for play.
19. Therefore, if SCML is permitted to increase the number of gaming tables installed in the Gambling Area, without any increase in the number of tables which are permitted to be in operation, there will be no increase in opportunities for casino gambling. Opportunities for casino gambling can only be provided by tables that may be operational, so by limiting the permitted number of operational tables to 110, SCML will remain within its theoretical maximum level of opportunities (provided that the combination of table games is an approved game mix, and therefore under SCML's regulatory benchmark).
20. PGF objected to SCML's proposal, submitting that it would allow SCML to increase opportunities, increase actual gambling and prevent SCML from losing opportunities that are currently available. PGF is probably correct that the proposal will result in an increase in the amount of gambling, and that it will allow SCML to maintain or maximise its current opportunities. However the maximisation of existing opportunity is not prohibited by section 11, nor does the Act require the Commission to prevent operators from taking steps to avoid losing opportunity.
21. As noted above, the proposal will not increase opportunities for casino gambling.

*Section 139 and the purpose of the Act*

22. Section 139(2) of the Act provides that a licence condition which is specified or varied under section 139(1) must be consistent with the Act; contribute to achieving the

purposes of the Act; contribute to the efficient and effective administrative of the Act; and must not permit an increase in the opportunities for casino gambling.

23. The purpose of the Act, set out at section 3, is to:

- (a) control the growth of gambling; and
- (b) prevent and minimise the harm caused by gambling, including problem gambling; and
- (c) authorise some gambling and prohibit the rest; and
- (d) facilitate responsible gambling; and
- (e) ensure the integrity and fairness of games; and
- (f) limit opportunities for crime or dishonesty associated with gambling; and
- (g) ensure that money from gambling benefits the community; and
- (h) facilitate community involvement in decisions about the provision of gambling.

24. Other than PGF, submitters did not raise any issues in relation to matters other than opportunities for casino gambling. PGF's concern was that SCML's proposal would facilitate more VIP gambling, with higher stakes and larger losses, which in turn would lead to a higher likelihood of gambling related harm. The Commission considered this submission to be overly simplistic. VIP gamblers may lose more than an average gambler, but the VIP customers at whom the level 5 facilities are targeted are likely to be able to afford greater losses. Further, harm cannot be equated simply with the amount of loss without considering other factors, such as the patron's means. For some patrons, losses totalling five, six or seven figures might be quite immaterial, whereas for others, losses totalling one or two hundred dollars would be catastrophic.

25. In any event, the Commission addressed the potential harm associated with the level 5 facilities when it approved their construction and design changes in decision GC25/10 (see paragraph 20).

26. The Secretary raised an issue over the potential risk of an accidental increase in opportunity should additional gaming tables be installed in the Gambling Area. He submitted that it is currently not possible for more than 110 tables to be open for play because only 110 tables are physically installed. If the number of installed tables is increased, it is theoretically possible for more than 110 tables to be open at one time.

27. The Secretary raised a similar concern in a recent application leading to decision GC19/11. The Commission dismissed the Secretary's concern in that decision as condition 6 of SCML's operator's licence limited the number of gaming tables in the Gambling Area to 110 and the Commission expected the condition to be adhered to. However the Secretary's concern is not as easily dismissed in this case given the flexibility and latitude that SCML seeks.

28. SCML stated that it wants to deploy 12 additional tables in the Gambling Area on the Main Gaming Floor with these tables being opened for play when one or more of the

salons on level 5 are closed for gaming. However SCML's proposed licence condition amendment neither specifies the number (or kind) of tables that it will deploy, nor does it specify where those tables will be deployed.

29. The Commission has previously considered such an arrangement in SCML's applications to deploy Fun Play tables. In decision GC20/08, SCML's covering letter stated that it wanted to install eight Fun Play tables and provided considerable detail regarding the proposed number, location, appearance and use of those tables. However SCML's application did not seek approval of those details; instead it sought to redefine the definition of a "gaming table".
30. The Commission rejected that application, noting that if SCML's proposal were approved, there would be no constraints on the number, placement or use of any tables which were not technically gaming tables as defined.
31. The current application gives rise to a similar concern. SCML's proposal, if approved, would permit a limitless number of additional tables in the Gambling Area, with the only constraint being that no more than 110 tables could be open for play. Such an approach is undesirable from a compliance and enforcement point of view. Conditions are required to contribute to the efficient and effective administration of the Act (section 139(2)(c)), not compromise it.
32. As the Commission noted in its Fun Play table decisions, there are sound reasons for the control and oversight of tables within the casino, including certainty of deployment, oversight and opportunities. The same rationale applies equally, if not indeed more so, in respect of gaming tables on which actual gambling can take place.
33. The Commission has therefore decided to amend SCML's proposed amendments in a manner that will provide SCML with the ability to deploy additional tables across the Gambling Area to meet customer demand, while resolving the monitoring and compliance issues arising under section 139(2)(c) identified above. The Commission's proposed amendment allows SCML to deploy 12 additional tables on levels 2 and 3, pairing them with gaming tables on level 5. When a table on level 5 is closed, the paired table on the Main Gaming Floor can be opened. For example, when a salon closes on level 5 with a Roulette table and a Black Jack table, the paired Roulette and Black Jack tables on the Main Gaming Floor can be opened.
34. The amendments to conditions 6 and 6A should result in a consequent amendment to condition 7, regarding the ratio of gaming tables to gaming machines. In the Commission's view, neither the Fun Play tables nor the alternate (unused) table of each of the 12 "pairs" should be counted in the table/gaming machine ratio in the licence

condition as there will always be 20 tables (eight Fun Play and 12 alternate pair tables) that are not available for gambling.

35. The Commission has amended conditions 6 and 6A, and inserted new conditions 6B and 6C. The conditions are as follows (with the changes shown in mark-up):

6. The number of gaming tables in the Gambling Area shall not exceed 110, except as permitted by conditions 6A and 6B.

~~6A~~ In addition to the gaming tables specified in condition 6, the Licence Holder may install 12 gaming tables on levels 2 and 3, ~~substitute tables, to be used as substitutes for the tables in level 5, when some or all of the level 5 tables are not in use. The location permitted number of the substitute tables and their location will be defined in approved floor plans. The substitute tables are subject to the following requirements:~~

~~(a) they must be clearly identified and defined as substitute tables in the approved floor plans for level 2 or 3;~~

~~(b) each must be matched or paired with a table of the same design on level 5 for which it may be substituted;~~

~~(c) each substitute table may only be opened for play when the paired table of the same type is closed on level 5; and~~

~~(d) they must be entered on the SGM system as substitute tables.~~

6B. In addition to the gaming tables specified in condition 6 and condition 6A, the Licence Holder may install up to 8 further tables on which casino type games may be played in the Gambling Area, provided those tables are not used for gambling purposes and satisfy the following minimum requirements:

(a) the layout cloths covering the tables shall bear an inscription to the effect, 'Fun Play Only – Not to be Used for Gambling';

(b) the tables may only provide for play on casino type games that form part of the approved game mixes specified in Annex A attached to this Licence;

(c) the tables shall not have drop boxes attached to them;

(d) the tables shall not have drop box slots for the placement of funds;

(e) the tables shall not be entered onto the SGM system or any replacement table management system.

6C. Games conducted on the tables permitted by condition 6B shall be conducted in accordance with the approved Rules applicable to that casino game type.

7. The ratio of gaming machines to gaming tables in the Gambling Area, excluding the tables permitted by conditions 6A and 6B, shall not exceed 15 to 1, except with the approval of the Commission.

36. The Commission considers that the amendments to the proposed conditions arise from the submissions received and that giving further notice of amendments and receiving further submissions is not required by section 140(1).

*Option 1*

37. As Option 2 was approved in modified form, there was no need for the Commission to consider Option 1.

*Condition 5*

38. Options 1 and 2 both proposed the same variation to condition 5 to allow SCML to increase the number of gaming machines in the Gambling Area, rather than in the casino. This variation raised no issues of regulatory concern.
39. The Commission observed that the present wording of the condition appears to be an anomaly when it is compared to the equivalent condition for gaming tables. When the Commission proposed to revoke SKYCITY's licence conditions and specify new licence conditions in substitution, the Secretary proposed amending the reference to "Casino Venue" in condition 6 to "Gambling Area". The Commission treated this as an unopposed, minor, and primarily technical amendment, and approved it without discussion. Parties either did not notice, or were unconcerned by, the anomaly created with condition 5.
40. Condition 5 is the same in all casino operator's licences, except for the Dunedin casino. Dunedin casino requested that the reference to "Casino" in its original condition 5 be amended to "Gambling Area" on the basis that this was consistent with condition 6. The Commission adopted the proposed amendment.
41. There is no good reason for distinguishing between "Gambling Area" and "Casino Venue" between conditions 5 and 6, and the anomaly should be remedied for all casinos. The Commission will, on its own initiative, propose such an amendment for all casinos.

**Decision**

42. The Commission varied conditions 5, 6, 6A and 7 of SCML's operator's licence, under section 139(1)(d) of the Act. Conditions 5, 6, 6A and 7 now provide as follows:
- 5. The number of gaming machines in the Gambling Area shall not exceed 1,647. Each terminal or player station of a multi-terminal or multi-player gaming machine shall be treated as one gaming machine.
  - 6. The number of gaming tables in the Gambling Area shall not exceed 110, except as permitted by conditions 6A and 6B.
  - 6A In addition to the gaming tables specified in condition 6, the Licence Holder may install 12 gaming tables on levels 2 and 3, to be used as substitutes for the tables in level 5, when some or all of the level 5 tables are not in use. The location of the substitute tables will be defined in approved floor plans. The substitute tables are subject to the following requirements:



- (a) they must be clearly identified and defined as substitute tables in the approved floor plans for level 2 or 3;
  - (b) each must be matched or paired with a table of the same design on level 5 for which it may be substituted;
  - (c) each substitute table may only be opened for play when the paired table of the same type is closed on level 5; and
  - (d) they must be entered on the SGM system as substitute tables.
- 6B. In addition to the gaming tables specified in condition 6 and condition 6A, the Licence Holder may install up to 8 further tables on which casino type games may be played in the Gambling Area, provided those tables are not used for gambling purposes and satisfy the following minimum requirements:
- (a) the layout cloths covering the tables shall bear an inscription to the effect, 'Fun Play Only – Not to be Used for Gambling';
  - (b) the tables may only provide for play on casino type games that form part of the approved game mixes specified in Annex A attached to this Licence;
  - (c) the tables shall not have drop boxes attached to them;
  - (d) the tables shall not have drop box slots for the placement of funds;
  - (e) the tables shall not be entered onto the SGM system or any replacement table management system.
- 6C. Games conducted on the tables permitted by condition 6B shall be conducted in accordance with the approved Rules applicable to that casino game type.
7. The ratio of gaming machines to gaming tables in the Gambling Area, excluding the tables permitted by conditions 6A and 6B, shall not exceed 15 to 1, except with the approval of the Commission.

### Right of appeal

43. 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

18<sup>th</sup> August 2011

