

IN THE MATTER of the Gambling Act 2003
AND an application by **DUNEDIN CASINOS LIMITED** for renewal of a casino venue licence

BEFORE THE GAMBLING COMMISSION

Members: S W Hughes KC (Chief Gambling Commissioner)
S C L Pearson
W A Acton
C M Risk

Date of Application: 16 June 2023

Date of Hearing: 20 September 2024

Dates of Decisions: 20 September 2024 and 18 December 2024

Date of Notification of Decision: 26 February 2025

**DECISION ON A CASINO VENUE LICENCE RENEWAL APPLICATION BY
DUNEDIN CASINOS LIMITED**

1. INTRODUCTION

- 1.1 On 16 June 2023, Dunedin Casinos Limited (“**DCL**”) applied to renew its casino venue licence (“**Application**”). This decision records the procedural background to the Application and the relevant renewal history, and summarises the written submissions and reports received in advance of, and the evidence received at, the public hearing on 20 September 2024. It sets out and applies the statutory test for renewal. It separately addresses the charitable trust conditions which the Gambling Commission (“**Commission**”) had earlier identified for consideration on casino venue licence renewal applications¹.

¹ See decision GC18/21, at paras 51 and 64(a).

2. THE APPLICATION

2.1 DCL was granted a casino premises licence (“**Licence**”) on 17 February 1999 under the Casino Control Act 1990. Casino premises licences became casino venue licences pursuant to section 122(2) of the Gambling Act 2003 (“**Act**”, all statutory references in this decision are to this Act unless otherwise stated). The licensed venue is the Grand Casino at 118 High Street, Dunedin (“**Casino**”).

2.2 Section 134 of the Act sets out the requirements for an application to renew a casino venue licence as follows:

134 Application for renewal of casino venue licence

- (1) The holder of a casino venue licence may apply to the Gambling Commission to renew the licence.
- (2) An application under subsection (1) must be—
 - (a) made in the period that is at least 1 year but not more than 2 years before the date on which the licence is due to expire; and
 - (b) on the relevant form; and
 - (c) accompanied by a casino impact report.
- (3) A casino impact report must be prepared by a person approved by the Commission as independent of the applicant, and must—
 - (a) report on the expected social and economic effects on the local and regional areas affected by the operation of the casino, and on New Zealand generally, of—
 - (i) the continued operation of the casino; and
 - (ii) the closure of the casino; and
 - (b) report on matters identified by the Gambling Commission.
- (4) The Gambling Commission may specify the research to be undertaken in preparing a casino impact report.
- (5) The applicant for renewal of a casino venue licence must pay for the casino impact report.

2.3 The Licence expired at midnight on 5 October 2024, 25 years after the casino commenced operation. On 15 June 2023, DCL filed the Application seeking to renew the Licence for a further 15 years, the period specified for renewal applications by section 138(2). As required by section 134(2), the Application was brought at least 1 year and no more than 2 years before expiry. Having made an application for renewal, the Licence continues in force until the Commission issues a decision on the Application, irrespective of the formal expiry date.²

² Section 138(4).

- 2.4 In accordance with the Act's requirements, the Application was made on the relevant form and was accompanied by a casino impact report ("CIR"), entitled "An Assessment of the Social and Economic Impacts of the Grand Casino, Dunedin" dated December 2022.
- 2.5 On 25 March 2021, in decision GC02/21, the Commission approved Brent Wheeler and Carl Davidson as independent of DCL and suited for authorship of the CIR. In addition to approving Mr Wheeler and Mr Davidson as authors, the Commission identified³ matters for the CIR to cover, additional to the default statutory requirements set out in section 134(3)(a), and specified⁴ the research to be undertaken in preparing the CIR. The additional matters to be covered were the amenities and facilities at the casino and the level of support locally, regionally and nationally for the continued operation of the casino, being matters which the Commission is required to consider under section 137(2). In addition, the Commission specified certain research to be undertaken into the casino facilities, the economic effects of its operation and the support for the Application.
- 2.6 After Mr Wheeler became unavailable to prepare the economic assessment section of the CIR, on 15 July 2021, in decision GC11/21, the Commission approved Simon Harris and Geoffrey Butcher to replace Mr Wheeler as authors of the CIR. The earlier approval of Mr Davidson and the identification of additional matters and specification of research expressly continued.

3. PROCEDURAL REQUIREMENTS

- 3.1 Section 135(1) sets out the process which the Commission is required to follow for determining applications for renewal as follows:

135 Process for determining applications for renewal

- (1) After receiving an application for renewal of a casino venue licence, the Gambling Commission must do the following things, although not necessarily in the order given:
- (a) investigate the applicant and persons with a significant influence under section 125 to determine whether they—
 - (i) are suitable, in terms of section 124; and
 - (ii) have complied with this Act and previous gaming Acts and regulations made under them:
 - (b) give public notice of the application:
 - (c) by public notice, invite written submissions on the application:

³ Under section 134(3)(b)

⁴ Under section 134(4)

- (d) by public notice, invite people who wish to appear and be heard at a public hearing to apply to the Gambling Commission for authorisation:
- (e) give public notice of the commencement of hearings, and of how people may find out where and when hearings are to be held:
- (f) make available for public inspection, subject to any agreement between the applicant and the Gambling Commission regarding confidentiality, copies of the application, any amendments to it, the casino impact report, and any other relevant documentation:
- (g) conduct a public hearing of the application at which evidence of the parties is heard and parties may examine and cross-examine witnesses:
- (h) give public notice of the decision of the Gambling Commission:
- (i) make copies of the decision available to the public.

3.2 Section 125 requires the Commission to investigate both the applicant for renewal and all persons with a significant influence. It sets out certain steps which the Commission is obliged to undertake, including the reference of the application and any additional information required by the Commission to the Police and any government agency (apart from the Inland Revenue Department) which the Commission considers relevant. The section requires the Police and the selected agencies to report to the Commission about the applicant and the persons with a significant influence. In the Application, DCL identified a total of 19 people as persons with a significant influence on DCL and provided information about them.

3.3 Section 124 indicates the purpose of the investigation required by section 125, namely, to enable the Commission to consider whether the applicant and persons with a significant influence are “suitable”. Section 124(2) sets out what the Commission must take into account in that consideration:

124 Suitability requirements

- (1) A casino operator’s licence must not be granted and a casino venue licence must not be renewed unless the Gambling Commission is satisfied that the applicant and persons with a significant influence are suitable.
- (2) In considering whether an applicant or person with a significant influence is suitable, the Gambling Commission must take into account the following matters:
 - (a) the honesty of the applicant or person with a significant influence, including—
 - (i) whether the applicant or person with a significant influence has been convicted of a relevant offence; and
 - (ii) whether the applicant or person with a significant influence has been disciplined by a professional body for ethical misconduct; and
 - (iii) whether the applicant or person with a significant influence has been disciplined in any way during previous involvement with a casino; and

- (iv) any other matters raised in the Police report, and the report of any government agency to which the application is referred, provided under section 125; and
- (b) the financial position of the applicant or person with a significant influence, including—
 - (i) whether the applicant or person with a significant influence has ever been adjudged bankrupt; and
 - (ii) whether the applicant or person with a significant influence has been directly involved in the management of a company that went into receivership or liquidation; and
 - (iii) whether the applicant or person with a significant influence has sufficient financial resources; and
 - (iv) whether the applicant or person has been prohibited or disqualified from acting as a director or promoter of, or in any way, whether directly or indirectly, being concerned or taking part in the management of, a company under section 382, 383, or 385 of the Companies Act 1993; and
 - (v) whether the applicant or person has been prohibited from acting as a director or directly or indirectly being concerned, or taking part, in the management of a company under section 299 of the Insolvency Act 2006; and
- (c) the business skills of the applicant or person with a significant influence, including—
 - (i) whether the applicant or person with a significant influence has sufficient business management experience; and
 - (ii) whether the applicant or person with a significant influence has sufficient experience in casino operation or the operation of similar ventures; and
 - (iii) whether the applicant or person with a significant influence has qualifications relevant to the operation of a casino; and
- (d) the management structure of the applicant, including—
 - (i) whether that structure is suitably arranged for effective compliance with this Act; and
 - (ii) the nature of all relevant interests in the financial and management structure of the applicant; and
 - (iii) whether all such interests encourage the applicant's effective compliance with the Act; and
- (e) any other matter the Gambling Commission considers relevant

3.4 The first requirement of section 135(1) is to investigate the applicant and persons with a significant influence under section 125.⁵ In discharge of the section 135(1)(a) investigations under the Act, the Commission sought and received responses on DCL and the identified

⁵ Section 135(1)(a).

persons from the Police, the Department of Internal Affairs (“**DIA**”), the Insolvency and Trustee Service, and the Companies Office.

- 3.5 The Commission also gave public notice of receipt of DCL’s application in which it invited both written submissions on the application and applications for leave to appear at the public hearing from the public.⁶
- 3.6 The Commission received 195 submissions on the application and indications from 12 of those that they wished to appear at the hearing. Eleven of the original 12 submitters who so indicated subsequently either withdrew the application to appear or failed to respond to a request from the Commission to provide supporting grounds, leaving only the Applicant seeking authorisation to appear. On 19 August 2024, in GC09/24, the Commission gave directions regarding the hearing.
- 3.7 As required under section 135(1)(e), the Commission gave public notice of the commencement of a public hearing of the Application at 9.00 am on Friday, 20 September 2024 at the Dunedin Centre, 1 Harrop Street, Dunedin.
- 3.8 As required by section 135(1)(f), a copy of the DCL’s application and all amendments to it, the CIR, and other relevant documentation were made available for inspection on the Commission’s website.
- 3.9 The Commission conducted a public hearing of the Application on 20 September 2024. Evidence in person was given for DCL by its chief executive, Dominique Dowding, by two of the CIR authors, Simon Harris and Carl Davidson, and by DCL’s Anti-Money Laundering Compliance Officer, Kerry Taylor. Evidence in person was to have been given by Stacey Murray, DCL’s Compliance Manager, but an unexpected flight cancellation prevented her attendance. As the Commission had not intended to ask any questions of her, a direction was given for her witness statement to be received in the form of an affidavit. Counsel for DCL made oral submissions from a written synopsis.

4. THE STATUTORY TEST FOR RENEWAL

- 4.1 The Act sets out, in section 136, the information and matters that the Commission must consider in deciding whether to renew a casino venue licence:

136 Information and matters to be considered

Before deciding whether to renew a casino venue licence, the Gambling Commission must consider—

⁶ Section 135 (1)(b) – (d).

- (a) the application; and
- (b) the casino impact report; and
- (c) any additional information or evidence provided by the applicant or person with a significant influence at the Gambling Commission's request; and
- (d) any written submissions and other written and oral evidence; and
- (e) the compliance record of the applicant and persons with a significant influence; and
- (f) any views conveyed by a local authority after an opinion poll or community consultation process; and
- (g) the results of investigations under section 125.

4.2 The Act sets out, in section 137, the test which the Commission must apply in considering an application to renew a casino venue licence as follows:

137 Renewal of casino venue licence

- (1) The Gambling Commission must not renew a casino venue licence unless it is satisfied that—
 - (a) the applicant and persons with a significant influence are suitable in terms of section 124; and
 - (b) the applicant's compliance record, and that of persons with a significant influence, is satisfactory; and
 - (c) renewing the licence will result in a net benefit—
 - (i) to the local and regional communities around the casino; and
 - (ii) to New Zealand generally.
- (2) In assessing whether there is a net benefit, the Gambling Commission must consider—
 - (a) the social and economic effects of granting, or refusing to grant, the renewal; and
 - (b) the level of support for the application, including the result of any poll conducted by the local authority; and
 - (c) the nature and standard of the casino facilities.

4.3 The Commission must not renew a casino venue licence unless it is satisfied that all section 137(1) criteria are met. In assessing whether there is a net benefit, the Commission must consider the factors set out in section 137(2). The primary question accordingly is whether the information before the Commission leaves it satisfied of each of the listed matters.

The meaning of "satisfied"

4.4 No party addressed the meaning and application of "satisfied" in the written submissions filed in advance of the hearing. As covered in the submissions made for DCL at the hearing, the term was considered by the Commission in the Christchurch casino venue renewal decision,

Decision GC05/19, being the first renewal application under section 137. In that decision, the Commission had regard to, and cited passages from, its own earlier consideration of the meaning of the term “satisfied”, where it appeared in a similar provision, section 52, grounds for granting a class 4 operator’s licence. It also considered decisions under section 66 of the Commerce Act 1986 which contains a similar provision⁷, and cited, in paragraph 3.11, a passage from the Court of Appeal decision in *Commerce Commission v Woolworths Ltd*.⁸

4.5 The Commission recorded its conclusion on the issue as follows:⁹

The Commission adopts a similar position to the application before it. The Commission approaches the question before it on the basis that the persuasive rather than evidential onus is on the applicant to satisfy the Commission that each of the section 137(1) criteria are met. If the Commission is in doubt or is unsure of whether a criterion is met, it will not be satisfied. However, “in doubt” in this context does not import the criminal law concept “of a reasonable doubt”.

5. FIRST CRITERION – SUITABILITY OF APPLICANT AND PERSONS WITH SIGNIFICANT INFLUENCE

5.1 Under section 137(1)(a), the Commission must not renew a casino venue licence unless satisfied that the applicant and persons with a significant influence are suitable in terms of section 124.

5.2 The Commission required DCL and each person of significant influence to complete detailed personal information forms. The Commission subsequently received reports on DCL, and the persons identified as having significant influence (which included the Casino’s licensed casino operator, Dunedin Casinos Management Limited (“**DCML**”)) from the Police, DIA, the Insolvency and Trustee Service and the Companies Office.

5.3 One of the persons of significant influence, Stuart James McLaughlan, was identified by the Insolvency and Trustee service as having been a director of South Canterbury Finance when it went into receivership. As a consequence, additional inquiries were made with the Serious Fraud Office (“**SFO**”) and the Treasury, the agencies with the closest connection to the issues which arose with South Canterbury Finance. The SFO advised that Mr McLaughlan was not charged in relation to any matter associated with South Canterbury Finance and that it had no concerns to raise about him.¹⁰ The Treasury similarly advised that there was no basis for concern about the position of Mr McLaughlan as a person of significant influence at DCL.¹¹

⁷ Decision GC05/19 at paras 3.6 to 3.11.

⁸ [2008] NZCA 276

⁹ At para 3.12.

¹⁰ Response from the SFO to Commission.

¹¹ Response from Treasury to Commission.

- 5.4 The Police and other agencies reported that they similarly had no matters of concern about the suitability of the persons and companies identified as having a significant influence on DCL.
- 5.5 The reports received raised no issues about the suitability of DCL or the persons with significant influence. No party raised any suitability concerns in submissions. The Commission is satisfied about the first criterion – the suitability of DCL and the persons with significant influence.

6. SECOND CRITERION – COMPLIANCE RECORD OF APPLICANT AND PERSONS WITH SIGNIFICANT INFLUENCE

- 6.1 Under section 137(1)(b), the Commission must not renew a casino venue licence unless satisfied that the compliance record of the applicant and persons with significant influence is satisfactory.
- 6.2 The Commission received a report on regulatory compliance from DIA, the agency charged with enforcement of the statutory and licence condition obligations of gambling licence holders, following a review of its compliance records. The DIA reported that “overall, it found DCL’s compliance record to be good and has no concerns to bring to the Commission’s attention.”¹²
- 6.3 DCL was said to have proactively disclosed information to DIA about issues arising and had sought DIA’s views on issues arising. Investigations by the Casino had been thorough and, as a result, DIA had rarely reached a different conclusion than reported to it. DCL had always been very responsive to issues raised by DIA, and had amended policies and practices following audits and investigations conducted by DIA. During inspections, DCL’s staff had been compliant and demonstrated knowledge of the requirements asked of them. From the context, it is clear that the references to DCL included the licensed operator referred to below, DCML, as well as the venue licence holder.¹³
- 6.4 The compliance record report identified a licence suspension imposed on DCML, an identified person of significant influence, which holds the casino operator’s licence for the Casino and is a party to a casino management agreement with DCL. On 17 October 2006, in decision GC29/06, its DCML’s operator’s licence was suspended for 2 days by the Commission. The suspension arose from events involving a Casino customer, Christine Keenan, who had been a regular customer from April 2001 until August 2004 when she had been arrested on dishonesty charges as she left the Casino. However, most of the events of concern, and the

¹² It appears that the investigations carried out by DIA related to both DCL and DCML.

¹³ Response from DIA dated 19 March 2024.

harm suffered, predated DCML becoming the casino operator on 1 April 2004 and the operative provisions of the Act coming into force on 1 July 2004. They were principally the result of earlier failures by the preceding licensed operator, Aspinall (NZ) Limited. The suspension related to breaches of DCML's Responsible Gambling Programme and section 309 during the short period of DCML's responsibility. The events were more than 20 years ago and involved staff previously employed by the former operator.

6.5 The last DIA mystery shopper exercise had been in 2017, with no issues raised. A mystery shopper exercise was also carried out as part of the CIR preparation. DCL performed well across the three different scenarios.¹⁴ The scenarios carried out were:

- (a) response to cues about gambling harm;
- (b) assessing staff response to long hours of play;
- (c) assessing staff responses to declined cash withdrawals.

6.6 The compliance report is generally favourable and raises nothing for the Commission to be concerned about when considering the second criterion for the renewal of the Licence. As the Commission noted in the Christchurch casino renewal decision, the statutory requirement is not that the compliance record be unblemished, but satisfactory.¹⁵

6.7 In the course of the hearing, new information came to light about aspects of DCL's compliance with the licence conditions relating to the charitable trust which DCL was obliged to set up and fund periodically (discussed below). It appears that those matters had not been revealed previously and, as a result, do not form part of any relevant compliance record. The Commission considers that those matters do not affect its satisfaction about the second criterion.

6.8 The Commission is satisfied about the second criterion – the compliance record of DCL and the persons with significant influence.

7. THIRD CRITERION – NET BENEFIT

7.1 Under section 137(1)(c), the Commission must be satisfied that renewing the venue licence will result in a net benefit to local and regional communities around the casino as well as New Zealand generally. In assessing net benefit, it must consider the matters set out in section 137(2) namely:

¹⁴ CIR at pages 132 – 134.

¹⁵ Decision GC05/19, at para 5.6.

- (a) The social and economic effects of granting, or refusing to grant, the renewal;
- (b) The level of support for the application, including the result of any poll conducted by the local authority; and
- (c) The nature and standard of the casino facilities.

The social and economic effects of granting, or refusing to grant the renewal

- 7.2 Under section 134(3), the CIR is required to report on the expected social and economic effects on the local and regional areas affected by the operation of the Casino, and on New Zealand generally, and on any matters identified by the Commission. As noted in paragraph 2.5 above, the Commission identified, for additional inclusion in the CIR, the amenities and facilities at the Casino and the level of support locally, regionally and nationally for its continued operation. The following paragraphs, 7.3 to 7.20, summarise the relevant contents of the CIR on those matters.
- 7.3 The Casino operation spent an annual average of \$5.35 million on suppliers in the period 2019 to 2021, 39% of which was in Dunedin, 3% in Otago and 58% elsewhere. At the time that the CIR investigation was carried out, DCL had a payroll of 89 employees, a decrease from the previous highest number of 131 by reason of changes during and since the Covid-19 pandemic. The total expenditure on wages and salaries averaged \$5.88 million annually between 2019 and 2021. The average earnings of employees was \$60,220. Base wage rates are the living wage.¹⁶
- 7.4 Stakeholders in the Dunedin tourism sector who were interviewed did not regard the Casino as a major attraction for the city, but as a component part of a collection of local activities. It is estimated from the survey data that about 31% of visitors to the Casino are from outside Dunedin. Of those, 15% of the visitors are from elsewhere in Otago, 15% are from elsewhere in New Zealand and 1% from overseas.¹⁷
- 7.5 Of the businesses in the Casino's neighbourhood, only 2 (or 12%) indicated that the closure of the Casino would have a major impact on them. A larger proportion, 36%, indicated that the closure of the Casino would have some impact on them, or on Dunedin more widely.¹⁸ While the Casino is a minor player in the city's economy, and would be unlikely to have an overall materially positive or negative impact if it were to close, it is a source of employment and its employees value working there. It also provides a unique entertainment option in the

¹⁶ CIR at page 38.

¹⁷ CIR at page 53.

¹⁸ CIR at page 56.

city and the Casino is valued by its patrons. On a national scale, the Casino generates \$5.7 million in taxes and levies.¹⁹

- 7.6 The most obvious social benefit of the Casino is the entertainment that it provides when people attend, whether to gamble or to enjoy the other hospitality that it offers. In the Dunedin community survey carried out as part of the CIR, 61% of the respondents said visiting the Casino had given them “pleasure and fun”.²⁰ A DCC councillor said in support:²¹

I also see it as a good fun environment that a lot of people seem to enjoy. Because there's enough going on that's not just around the gaming and the tables and everything else.

- 7.7 The most common negative impact of a casino is gambling harm and crime. Dunedin has 2.5% of New Zealand's population, but accounts for an estimate of only 1% of problem gambling cases and 2% of those that seek help.²²
- 7.8 The Casino spent \$613,000 in 2022, and was projected to spend \$643,000 in 2023, on harm reduction including software, staff and consultant costs. The Casino's HRP is highly regarded by stakeholders.²³
- 7.9 A majority, 64%, of the Casino's visitors are over the age of 60. However, there is no evidence that there is a systemic gambling problem amongst older people in Dunedin.²⁴ In evidence, Mr Davidson, one of the CIR authors, pointed out that, despite the over-representation of those over 60 in the customer base, they are massively under-represented in exclusions and that nobody raised any concerns about negative effects on older customers, including Grey Power and Aged Concern.²⁵
- 7.10 Mr Davidson also emphasised the positive feedback received from those interviewed, including the extent to which it was seen as a safe venue for entertainment,²⁶ and confirmed his view that there is very little harm or anti-social behaviour attributed to the Casino.²⁷
- 7.11 It is widely acknowledged that Māori and Pacific people are generally more likely to experience gambling harm than other population groups. The 2018 census showed that 9.3% of the population of Dunedin was Māori and 3.2% were Pacific people. In contrast, only 4% of the Casino's visitors are Māori and Casino staff report low levels of at-risk gambling

¹⁹ CIR at page 112.

²⁰ CIR at page 58.

²¹ CIR at page 62.

²² CIR at page 70.

²³ CIR at page 72.

²⁴ CIR at page 81.

²⁵ Transcript, C Davidson, page 34, line 32 to page 35, line 4, and page 35, line 23.

²⁶ Transcript, C Davidson, page 33, line 4 to line 11.

²⁷ Transcript, C Davidson, page 33, line 19 to line 25.

behaviour in that population. Similarly, only 1% of the Casino’s visitors are Pacifica and Casino staff similarly reported low levels of at-risk gambling activity in that population.²⁸

- 7.12 The CIR reported that, between 2018 and 2022, 8 Māori patrons were excluded.²⁹ While the number is correct in fact, it lacks meaningful proportional context within the total exclusions by the Casino over time. Based on information from the Casino’s 2023 HRP report, between 2013 and 2023, there was a total of 342 exclusions. Of these 24 were Māori, 46 Chinese, 2 Fijian, 2 Samoan, 2 Tongan and 57 New Zealand Europeans.³⁰ Māori therefore made up 7.02% of exclusions and Pacific people (Fiji, Samoan and Tongan) only 1.75% of exclusions, both being lower than their proportional representation in the local population.
- 7.13 Of more concern to a group of 30 stakeholders³¹ involved in the CIR investigation was the impact of the Casino on Asian residents. Although only 8% of the population of Dunedin identifies as Asian, Chinese patrons made up 16% of Casino exclusions between November 2018 and May 2022.³² On a national level, according to research conducted for Asian Family Services (“**AFS**”), Asian gamblers make up 18.4% of all problem gamblers, which equates to 13.8% of all Asians in New Zealand.³³
- 7.14 By reference to the Casino’s 2023 HRP report, there were 119 exclusions of Asian people, in the period 2013 to 2023.³⁰ As an overall percentage, 34.8% of the exclusions during 2013 – 2023 were Asian (using the term broadly and including the Indian sub-continent).
- 7.15 However, the only specific concern raised by members of the Asian community in response to the proposed renewal was the risk that overseas students might go to the Casino because of loneliness and homesickness. While it acknowledged the risk of harm for the Asian community, more widely, the Asian community views the Casino as an important source of entertainment for their community and some view it as a social club.³⁴ It is seen as a safe place to socialise in the evenings.³⁵
- 7.16 The other major concern with adverse effects of casinos can be criminal activity. There seems to be little evidence of crime or anti-social behaviour associated with the operation of the Casino.³⁶ This is consistent with the Casino’s own records of the number of patrons that they

²⁸ CIR at page 86 and 87.

²⁹ CIR at page 85.

³⁰ HRP report to Commission YE 31 October 2023 at 8.3.

³¹ Made up of media, Police, charities, DCC and Otago business/community groups.

³² CIR at page 87.

³³ CIR at page 88. “Asian” is not defined in the CIR but, in evidence (transcript, C Davidson, page 41, line 10), an author confirmed that it is used very broadly and includes the Indian sub-continent.

³⁴ CIR at page 88 – 91.

³⁵ Transcript, C Davidson, page 35, line 23 to line 30.

³⁶ CIR at page 92.

have asked to leave as a result of behavioural issues. Between April 2021 and June 2022, only 3 patrons were asked to leave for their behaviour.³⁷

- 7.17 The Casino had a representative from Opportune, a firm specialising in delivering services to clients in audit, risk management, governance and compliance, assist with changes to AML compliance. The representative described training the Casino staff more rigorously on identifying customers, and risk profiling customers once in the casino.³⁸
- 7.18 The Dunedin Casinos Charitable Trust (“**Charitable Trust**”) was established as a result of DCL’s original licence application and its objectives are to assist charitable organisations in:³⁹
- (a) the relief of poverty;
 - (b) the advancement of education;
 - (c) the advancement of religion;
 - (d) the advancement of sports for the benefit of the wider community; and
 - (e) any other charitable purposes deemed beneficial to the community by the Trustees.
- 7.19 A representative from the Charitable Trust stated that “the grants the trust provides are critical to some charities” and the trustee believed “absolutely there would be an impact on communities” if the funding ceased to be available. The CIR reported that DCL “pays \$110,000 to the Grand Casino Dunedin Charitable Trust and paid a total of \$2.2 million to the Charitable Trust between October 1999 and September 2021.”⁴⁰
- 7.20 DCL also provides direct grants and sponsorships to community organisations such as the sports and the arts. In 2022, DCL distributed nearly \$130,000 in sponsorship.⁴¹ The Orokuni Ecosanctuary, who received \$5,000 in sponsorship, said:

Quite frankly I would not want to lose the Casino. It’s quite important to us to have a spread of donors. In terms of sponsors. I don’t want all our eggs in one basket... I would class the casino as one of the very valuable organisations that we are associated with ... I can assure you that the amount that we receive from them is highly valued. Highly valued.⁴²

Level of support for the application

CIR survey

- 7.21 Under section 137(2)(b), the Commission must consider the level of support for the application, including the result of any poll conducted by the local authority. No such poll was

³⁷ CIR at pages 92 – 95.

³⁸ CIR at page 97.

³⁹ CIR page 39.

⁴⁰ CIR page 39 - 40.

⁴¹ CIR page 41.

⁴² CIR page 44.

undertaken. However, as directed by the Commission, the CIR authors undertook a survey of community attitudes to the Casino, the results of which are recorded in section 9 of the CIR.

- 7.22 Table 1 recorded the connection of survey participants to the Casino. 27% of participants had never visited the Casino, 23% had visited but not gambled and 49% had visited and gambled.
- 7.23 Table 3 recorded the frequency with which survey participants engaged with the Casino. 44% of participants had been once only and never returned, 45% visit once or twice a year, 9% visit between 3 and 10 times a year and 2% visit once a month.
- 7.24 Table 9 recorded the survey participants' attitudes to closing the Casino. The majority of participants, 54%, were unsure or neutral concerning the Casino. 6% thought that Dunedin would be a much better place without the Casino; 9% thought that Dunedin would be somewhat better without the Casino; 25% said Dunedin would be somewhat better with the Casino and 7% said that Dunedin would be a much better place with the Casino.⁴³

Submissions received

- 7.25 The Commission received 195 written submissions on the Application, comprising 191 in favour, 2 neutral and 2 opposed. Those in favour of the Application were generally staff members, patrons of the Casino, local businesses and Charitable Trust recipients. The two submitters neutral on the renewal were Health New Zealand (“**HNZ**”) and AFS. The opposing submitters were Problem Gambling Foundation (“**PGF**”) and National Māori Gambling Harm Minimisation Public Health Collective (“**Māori Collective**”).
- 7.26 The general themes covered in the written submissions supporting the Application included the Casino being a good employer, a safe and responsible host of gambling, entertainment, tourism and its involvement with the community through donations to local charities.
- 7.27 Among the submissions in support were Bex Twemlow, the founding director of Firebrand, Mike Collins, the CEO of Business South, Mike Coggan from Otago Cricket, the Orokonui Ecosanctuary, the Zonta club of metropolitan Dunedin and Dunedin City Councillor, Andrew Whiley:
- (a) Ms Twemlow highlighted the integrity of DCL: “Having worked closely with Grand Casino, we attest to the integrity and ethical standards upheld by the organisation. Their leadership is dedicated to conducting business responsibly and ethically, with the well-being of the community as a top priority.”

⁴³ CIR page 141.

(b) Mr Coggan from Otago Cricket commented on the charity work that the Casino does: “Otago Cricket plays an important partnership role with Grand (Dunedin) Casino. The Grand Casino are an invaluable partner with Otago Cricket. Both organisations have a Charitable Trust with overlapping charitable purposes. Each year we seek to work together to raise awareness of mental health each year including raising funds, most recently for I Am Hope.”

- 7.28 Sky City Entertainment Group and the Christchurch Casinos Limited also made submissions in support of DCL’s application.
- 7.29 The Dunedin City Council (“**DCC**”) made a submission in support of the renewal of the Licence.⁴⁴ DCC recognised the positive community impact that the Casino has with its Charitable Trust and through provision of a significant entertainment option for the city. It also observed that host responsibility was taken seriously. However, DCC asked the Commission to consider increasing the community contribution benefit obligation (specifically by increasing the amount paid to the Charitable Trust by DCL), a matter dealt with later in the decision, and raised the question of the wellbeing of Māori, on the basis that they are disproportionately affected by gambling harm.
- 7.30 AFS took a neutral stance on the licence renewal but took the opportunity to share its views on the HRP and PGIP.⁴⁵ AFS recommended that explicit acknowledgement of the unique needs of Asian gamblers should be included in the HRP’s position statement and the HRP should also indicate how barriers can be reduced for concerned family of Asian gamblers so that they can effectively communicate about signs of gambling harm.
- 7.31 More generally, AFS recommended that DCL develop ways to include culturally appropriate pathways for Asian gamblers and update the treatment provider list to include AFS expressly. AFS also recommended that DCL remain committed to ongoing lessons about the needs of Asian gamblers.
- 7.32 HNZ advised that it was neutral regarding the renewal of the licence, provided that public health and harm minimisation efforts were considered as a condition of the renewal.⁴⁶ Its submissions set out the major public health concerns surrounding gambling generally, the importance of DCL working with PGF and other key stakeholders, and of staff training regarding problem gambling. It included suggested changes to DCML’s HRP by introducing mandatory carded play.

⁴⁴ DCC letter dated 28 May 2024 at [3].

⁴⁵ ASF letter dated 31 May 2024.

⁴⁶ NHZ letter dated 4 June 2024 at [6].

- 7.33 PGF opposed the application. PGF acknowledged that DCL willingly assists patrons who are experiencing harm but argued that it cannot ignore the fact that the Casino’s gambling products and table games have caused and continue to cause harm.⁴⁷ PGF argued that the CIR had applied “a reductive approach” when estimating the number of patrons who had experienced gambling harm because the CIR reported that there had only been an estimated 20 persons who presented at gambling counselling services as a result of DCL’s activities. In comparison, the Ministry of Health (“**MOH**”) estimated that there are more than 250,000 people a year in New Zealand who experience gambling harm.⁴⁸ PGF also submitted that gambling harm disproportionately impacts Māori, Pacific peoples, Asian peoples, and young people but DCL had not adopted any specific strategies for these groups.⁴⁹
- 7.34 The Māori Collective opposed the application on the basis that it lacks sufficient evidence to assess the impact and effectiveness of the current Casino HRP and other harm minimisation measures for Māori and Tauīwi but that there is a substantive evidence base showing existing gambling harm inequities experienced by Māori.⁵⁰ The submission raised the following issues for consideration:⁵¹
- (a) The Commission should consider how the Commission will contribute to the purposes of Pae Ora (Healthy Futures) Act 2022 (“**Pae Ora**”), with specific reference to how it will achieve equity in health outcomes, including striving to eliminate health disparities, in particular for Māori.
 - (b) Within the context of Pae Ora, how the Commission will give effect to the Treaty of Waitangi, which includes meaningful engagement with Māori stakeholders and incorporation of Māori perspectives into decision making frameworks regarding the casino.
 - (c) Inclusion of a specific allocation of sponsorship of culturally sensitive gambling support services for Māori and whanau.

The substance of the Māori Collective submissions is addressed in more detail below.

- 7.35 The Applicant filed written reply submissions which addressed gambling harm and the economic contributions and community involvement of DCL. The reply submissions referred extensively to the CIR and to written submissions in support of the application and in response to submissions made by DCC, the Māori Collective, PGF, HNZ and AFS. The reply

⁴⁷ PGF letter dated 30 May 2024 at [4].

⁴⁸ Ibid, at [8] and [9].

⁴⁹ Ibid, at [16] and [17].

⁵⁰ Māori Collective letter dated 29 May 2024 at [3].

⁵¹ At [17].

submissions on the proposal by DCC to increase in the mandatory contribution to the Charitable Trust are referred to in a later section.

- 7.36 The reply submissions pointed to written material which indicated that the Casino was generally regarded as a safe environment, that it is diligent in discharging its harm minimisation obligations, and that it has contributed economically and socially to Dunedin, including by local employment, by the purchase of goods and services locally and by charitable contributions, both direct and through the Charitable Trust.
- 7.37 The reply submissions also addressed the criticism by PGF that the CIR took a reductive approach, pointing out that the CIR authors were approved as independent and that the focus of the MOH Strategy document relied on by PGF was national, and not the Casino and its effects. They also noted that the CIR evidence indicated that Māori and Pacific people appeared to suffer harm which was disproportionately lower than their representation in the local and regional population and that, while that was not true of the Asian population, DCL was working with AFS to address the elevated risk.

Nature and standard of the casino facilities

- 7.38 In assessing net benefit under section 137(1)(c), the Commission must consider the nature and standard of the casino facilities.
- 7.39 The Casino is licensed to operate 180 electronic gaming machines, 12 gaming tables which have a variety of card games including Blackjack, Roulette, Mini and Midi Baccarat, Caribbean Stud Poker, 3 Card Poker, Poker, Casino War and Ultimate Texas Hold'em. Since Covid-19, it has offered only 150 electronic gaming machines and 10 gaming tables.⁵²
- 7.40 In addition to the gaming spaces, the Casino offers the following entertainment facilities:⁵³
- (a) The Grand Bar and Restaurant – the Casino's bar and restaurant, catering for up to 55 guests at a time.
 - (b) Round 118 – a lounge and tapas bar that doubles as the Casino's principal function space that can accommodate party sizes of up to 25 guests. The venue is used for cocktail making, gin or whisky masterclasses, parties and other events.
- 7.41 The Casino operates from 12pm to 2am Friday and Saturday and 12pm to 12am Sunday to Thursday.⁵⁴

⁵² Dunedin Casino Licence Renewal Application at [33] and [34].

⁵³ At [35].

⁵⁴ At [32].

- 7.42 The initial fit out of the Casino in 1999 involved \$11.6 million in expenditure, \$6.7 million on fit out and \$4.2 million on gaming equipment. Between the initial fit out and 2009, capital expenditure was low but, from 2009 to 2020, averaged \$1.4 million per annum, and, between 2019 and 2021, averaged \$1.1 million per annum.⁵⁵
- 7.43 In April 2021, the Casino was rebranded as the “Grand Casino” which is based on the original name of the building, the Grand Hotel. In the course of the rebranding, the Casino and bar and restaurant areas were refurbished.⁵⁶

Satisfaction with third criterion – net benefit

- 7.44 It was submitted for DCL that the evidence before the Commission was sufficient to satisfy it concerning net benefit. The Commission agrees.
- 7.45 The position which emerged from the CIR and the submissions received indicates as follows:
- (a) The Casino makes a positive, although modest and non-essential, social and economic contribution to Dunedin, the Otago region and New Zealand.
 - (b) Economically, it provides employment for 89 people and benefits a number of local businesses who supply it. It provides funding, both directly and through the associated independent charitable trust, to support the local community. It provides social and entertainment options in Dunedin which are appreciated.
 - (c) The negative social and economic effects relate to problem gambling. However, there is nothing to suggest that the Casino is a particular concern in that regard. While there is a lack of direct evidence about the extent to which the Casino is responsible for gambling harm, the indications are that it is likely less of a problem than other forms of gambling (as historically the class 4 sector produces more problem gambling referrals than the casino sector) and Dunedin does not have a disproportionately high number of referrals nationally. The customer base is generally older.
 - (d) Although there is general concern nationally about Māori and Pacific people experiencing disproportionately more gambling harm than other groups, that does not seem to be the case in Dunedin, especially at the Casino, where Māori are disproportionately under-represented in the Casino customer base and in exclusions.

⁵⁵ CIR at page 36.

⁵⁶ Dunedin Casino Licence Renewal Application at [28] and [29].

- (e) Conversely, the Asian population of Dunedin appears to suffer disproportionately greater harm. That appears likely related to Chinese customers making up a disproportionately high number of the total Casino customer base. That is borne out by the Asian community viewing the Casino as an important source of entertainment for their community and something of a social club.
- (f) The evidence on local, regional and national levels of support is broadly positive, when consideration is given to the CIR survey and the balance of the submissions received, including the support of territorial local authority, DCC. The neutral and opposing submitters were focused on harm concerns.
- (g) There is nothing to indicate that the nature and standard of the facilities at the Casino are a matter for concern.

7.46 The Commission is satisfied about the third criterion – the relative net benefit of renewing the Licence.

8. OTHER ISSUES RAISED

Treaty of Waitangi and Pae Ora

- 8.1 The Commission is a statutory entity responsible for making decisions governed by the Act. It must make those decisions in accordance with the statutory criteria set out in the Act and with general principles relevant to lawful decision making. Those principles include considering the relevance of the Treaty of Waitangi to the decision being made.
- 8.2 As noted above, in its submission to the Commission, the Māori Collective referred to Pae Ora and invited the Commission to consider how its decision making process will progress the purposes of that Act, in particular by reference to achieving equity in health outcomes and giving effect to the Treaty of Waitangi by means of meaningful engagement with Māori stakeholders and incorporation of Māori perspectives into decision making frameworks regarding the casino.
- 8.3 Pae Ora is the statute which replaced the New Zealand Public Health and Disability Act 2000. Pae Ora does not create any role for, nor impose any obligations on, the Commission. Rather it created HNZ (in place of the District Health Boards), made provision for the Government Policy Statement on Health binding on HNZ and set out the objectives and functions of HNZ. The objectives of HNZ involve designing, arranging and delivering health services, community participation in health improvement and promoting health and reducing ill-health. Its functions include provision of or arranging for health services nationally, regionally and locally, undertaking and promoting public health measures, engaging with iwi-Māori partnership

boards and undertaking health research. It is for that reason that the Commission invited, and received, submissions from HNZ on the Application and that the Commission's practice is to invite submissions from HNZ on any matter which concerns gambling harm, its treatment and its minimisation, such as the periodic reviews of HRPs and PGIPs.

- 8.4 The third issue raised in the Māori Collective's submission related to additional financial support for culturally sensitive gambling support services for Māori. However, the nature and extent of gambling support services to Māori and others and their funding are subject to separate statutory arrangements, outside casino venue licensing, for which primary statutory responsibility has been given to the MOH.
- 8.5 Part 4, subpart 4 of the Act allocates responsibility to MOH for developing an integrated problem gambling strategy focused on public health and makes provision for a problem gambling levy to fund the strategy fully. Section 317(2) provides that the integrated problem gambling strategy must include services to treat and assist problem gamblers and their families and whanau.
- 8.6 Sections 319 and 320 provide for the imposition, by regulation, of a problem gambling levy and its calculation. The Commission's role is limited to consultation on the content of the proposed strategy and the levy calculation and to reporting to the Ministers responsible for the resulting levy regulation. That process takes place every three years.
- 8.7 The current Strategy to Prevent and Minimise Gambling Harm 2022/23 to 2024/25 ("**Strategy**") dates from June 2022. It contains numerous references to its alignment to the matters set out in Pae Ora, to the principles of the Treaty, to the need for greater collaboration with Māori and to developing a skilled, culturally safe, diverse and appropriate workforce for assisting Māori.
- 8.8 The purpose of the problem gambling levy is to recover the full cost of developing, managing and delivering the integrated problem gambling strategy developed by the MOH. The casinos, class 4 societies, Lotto and TAB NZ fund the Strategy by means of the levy, created through a formula set out in the Act⁵⁷ and reviewed every three years alongside an updated strategy for prevention and minimisation of gambling harm.
- 8.9 The social and economic effects of granting or refusing the Application include the likely effect on Māori, being a matter addressed in the CIR. Based on the 2018 census data, only 9.3% of the Dunedin population and 8.7% of the Otago region is Māori, compared to 16.5%

⁵⁷ Section 320.

nationally.⁵⁸ Only 4% of the Casino patrons are Māori⁵⁹, and casino exclusions of Māori patrons are below their proportional representation in the local population.⁶⁰

- 8.10 The Commission directly invited submissions on the Application from local Iwi. The Commission was advised that Iwi had considered whether to file submissions and elected not to do so.
- 8.11 Having regard to the role of HNZ and MOH in planning for and arranging the treatment of gambling harm, their consultation with Māori, the content of the current Strategy and its funding, the regular involvement of MOH and HNZ in HRP reviews, the data on Māori participation and experience of harm at the Casino, and the decision of local Iwi not to make submissions, the Commission considers that the matters raised by the Māori Collective require no additional consideration on the Application to renew the Licence.

Gambling harm issues

- 8.12 The submission by PGF raised a concern that “the CIR has applied a reductive approach to estimate those experiencing gambling harm” because data obtained from the MOH in the Strategy to prevent and minimise gambling harm 2019/20 to 2021/22 showed that more than 250,000 people across New Zealand experience mild, moderate or severe gambling harm.⁶¹
- 8.13 The CIR cites a report, *Gambling Machine Gambling Statistics and Research Paper: Information for Territorial Authorities* (February 2020) by True J. and Cheer M. (“**True Report**”) for the estimate of 20 Dunedin casino presentations to problem gambling counselling services in 2017/18. The CIR acknowledges⁶² that the estimate of 20 presentations is based on a number of assumptions as follows:⁶³
- (a) In the year 2017/18, a total of 4941 presentations to problem gambling services were recorded throughout New Zealand (according to MOH data).
 - (b) According to the MOH data, nationally, the casino sector accounts for approximately 20 percent of all presentations to problem gambling services.
 - (c) Based on an estimate in the True Report that 2% of the people who seek help for problem gambling in New Zealand are located in Dunedin, there were an estimated 99 presentations to problem gambling services in Dunedin.

⁵⁸ CIR at page 16.

⁵⁹ CIR at page 84 – 85.

⁶⁰ See para 7.11 above.

⁶¹ PGF report at [10].

⁶² CIR at page 70.

⁶³ CIR at pages 70 – 71.

- (d) If 20% of the Dunedin presentations were attributable to the Casino, an estimated total of 20 people in that year experienced problem gambling as a result of gambling at the Casino.⁶⁴
- 8.14 The figure of 250,000⁶⁵ that PGF refers to in its submissions is not an assessment of the level of harm resulting from the Casino. The figure refers to the whole of New Zealand and to harm from all types of gambling including all sectors contributing to the Problem Gambling Levy (all casinos, class 4 venues, TAB NZ and Lotto) and non-contributing sectors like internet gambling.
- 8.15 The 2022 Strategy (which is a more recent version of the report referred to by PGF) estimates that 184,000 people in New Zealand are either low, moderate or high risk problem gamblers.⁶⁶ The percentage of the 184,000 people that might attribute their harm to casinos, and specifically to the Casino, will likely be a small one.
- 8.16 The gambling sector which is associated with the highest number of referrals to treatment for problem gambling is class 4 (consisting of electronic gaming machines (**EGMs**) operated in clubs or pubs).⁶⁷ Analysis shows that 50.3% of those who played EGMs in pubs or clubs at least once a month experienced some level of gambling harm.⁶⁸ Total gambling expenditure for the period 20/21 was \$2.624 billion, with \$559 million of that occurring at casinos.
- 8.17 As at 30 June 2021, there were 1,059 licensed class 4 venues operating 14,704 EGMs throughout New Zealand. Lotto NZ's 2019/20 annual report states that there were 1,230,000 registered MyLotto account holders. In the 12 months to 23 February 2021, TAB NZ reported 205,000 active TAB customers and 360 TAB outlets. For context, there were six casinos in New Zealand (at the time of the 2022 Strategy) that operate up to 3,056 EGMs, 239 table games and 240 fully automated gambling machines.⁶⁹ The Casino is licensed to operate 180 EGMs, and 12 gaming tables, being approximately 1% of the EGMs and 5% of the table games in New Zealand.
- 8.18 The Commission's view of the evidence concerning the impact of gambling harm arising from the operation of the Casino and therefore on the Application is summarised in paragraph 7.45(c) above. There is nothing to suggest that the Casino is a particular concern with regard to problem gambling and harm.

⁶⁴ A CIR author confirmed that, although the data used was obtained from the True Report, it was verified against original MOH source documents (transcript, C Davidson, page 37, line 28).

⁶⁵ *Strategy to prevent and minimise gambling harm 2019/20 to 2021/22* at page 16.

⁶⁶ The Strategy at page 17.

⁶⁷ The Strategy at page 18.

⁶⁸ The Strategy at page 19.

⁶⁹ The Strategy at page 14.

Host Responsibility Programme

- 8.19 Several submissions suggested amendments to the Dunedin HRP.
- 8.20 In the course of the Christchurch casino venue licence renewal application, a number of submissions were made suggesting new or amended conditions directed at harm minimisation or changes to the current HRP.⁷⁰ In its decision, the Commission said the following in response to amending HRPs out of cycle:⁷¹

The Commission considers that HRP reviews should be properly focused and adopt a holistic approach to best harm minimisation practice. They are not suited to piecemeal amendment in the course of other applications and the Commission has not made a practice of doing so previously.

- 8.21 The Dunedin HRP was last amended in June 2024 in decision GC05/24. The next review is due no later than early 2027. In the course of its most recent HRP reviews, the Commission has been focused particularly on the pending development and introduction of mandatory carded play (“**MCP**”), one of the recommendations in the submissions received. The development of MCP is already a focus of the Commission but it is not yet ready for introduction. The Commission expects to review and amend HRPs as required in the future as MCP becomes available. That is not something which it is currently practical to consider further in the context of the Application.

9. CONDITIONS OF THE LICENCE PREVIOUSLY IDENTIFIED FOR REVIEW

- 9.1 Section 139(1)(b) provides expressly that the Commission may specify, vary or revoke the conditions of a casino licence “on renewing a casino venue licence.” As a result, the Commission may consider whether the current conditions in both DCL and DCML’s licences should be varied, or additional conditions specified.
- 9.2 Section 3(g) of the Act lists as one of its statutory purposes:

- (g) ensure that money from gambling benefits the community.

Schedule 1 of the Act specifies the conditions that may attach to a casino licence. They include:

- 3 Arrangements for any contributions to the community.

There were no equivalent statutory provisions in the Casino Control Act 1990 under which the original casino premises (now venue) licences were granted and the original conditions were imposed.

⁷⁰ Decision GC05/19 at [10.1].

⁷¹ At [10.17].

Charitable trust condition

- 9.3 In decision GC18/21, the Commission concluded a national review of all charitable trust conditions in casino venue licences. The review, which had been signalled in the Christchurch casino renewal decision⁷² and in a decision to amend the Auckland casino charitable trust condition⁷³, commenced in April 2021. Decision GC18/21 set out in detail the history of the charitable trust conditions and the amendments made prior to the 2021 national review, and summarised and analysed the submissions received. Submissions were received from the casino licence holders, relevant government agencies (DIA, MOH), relevant local authorities (which included DCC) and gambling harm sector advocates and treatment providers (which included PGF).
- 9.4 The Commission concluded that charitable trust licence conditions should be retained. On the question of uniformity, it concluded that there should be immediate amendments to all conditions relating to reporting on the funding of, and distributions by, the casino charitable trusts⁷⁴ but that, based on the experience of the Christchurch casino renewal, revision of the level of contributions for each casino (basis and amount) was better left to individual casino venue licence renewal applications rather than a single national review. The immediate exception was a further amendment to the basis and amount set out in the Christchurch casino conditions⁷⁵, for which renewal had already been completed, in order to realign them with the current Auckland casino condition (as they had been partially based on the earlier Auckland casino condition).
- 9.5 The Commission also recorded in decision GC18/21 that, in the course of renewal applications, it expected to consider historical comparative results of the current conditions, the basis for imposing minimum contributions (whether percentage of casino win or some other value), the appropriate percentage in each case and whether a minimum amount should also be specified.

Contribution obligations at the other casinos

- 9.6 In decision GC18/19, the Commission amended condition 15 of the casino venue licence of Sky City Auckland Limited (“**SCAL**”) to set the required contribution to the relevant trust to the higher of 0.7% of annual Casino Win and \$500,000. “Casino Win” was defined, in an amendment to condition 4 of the licence, to have the same meaning as the definition of the same term in section 12M of the Gaming Duties Act 1971, which provides:

⁷² Decision GC05/19

⁷³ Decision GC18/19

⁷⁴ Subsequently effected in Decision 05/22

⁷⁵ Subsequently effected in Decision 06/22

casino win, in relation to a casino operator and to any return period, means an amount (not being less than zero) ascertained by deducting from the amount of the gaming income of the casino for the return period the aggregate of—

- (a) the amount of gaming wins paid out by the casino in the return period; and
- (b) the amount of casino losses (if any) of the casino for the immediately preceding return period.

9.7 The casino win based formula was adopted, on the application of the licence holder, because it would connect charitable contributions to periodic gambling turnover, limit the focus to money derived from gambling only (and not from conjoint facilities and non-casino businesses, as the former condition had done) and avoid the potential risk of reduction in the event of capitalising future non-gambling income (which would remove certain profits from the previous profit-based contribution formula).⁷⁶ The percentage was set to reflect the contributions received historically under the former condition and was expressly interim and not an evaluation of the future appropriateness of the level of contribution⁷⁷.

9.8 Condition 15 of the SCAL venue licence now provides:

- 15. The Licence Holder shall financially support the Independent Charitable Trust established by the Deed of Trust. The Licence Holder shall pay to the Trust, in respect of each full year of casino operations, commencing 1 July 2019, **not less than 0.7% of the Casino Win**, such payment in any one year never to be less than \$500,000. The Licence Holder is required to provide annually to the Commission an audited statement certifying the amount constituting 0.7% of the Casino Win, the amount paid by the Licence Holder to the Trust, and confirming that payment by the Licence Holder to the Trust has been made in accordance with condition 15. [Emphasis added]

9.9 On the renewal of the casino venue licence of Christchurch Casinos Limited, in decision GC05/19, the Commission amended the equivalent condition to reflect the earlier SCAL condition (as it had been prior to decision GC18/19), but with a lesser \$250,000 fixed minimum, and added a further provision requiring either additional direct community contribution or additional trust funding, a provision which does not have an Auckland casino equivalent. The conditions reflected terms agreed between the appearing parties. The decision was expressly interim as the Commission expected to undertake a general review of charitable trust conditions in the future.⁷⁸

9.10 Following decisions in GC18/19 and GC18/21, in decision 06/22, the Commission amended condition 14 for the Christchurch casino venue licence to realign it with the updated condition 15 of SCAL's licence such that that the minimum percentage contribution would be based on "casino win" rather than "net profit." Condition 14 at Christchurch now reads:

⁷⁶ Decision GC18/19 at para 4.11.

⁷⁷ Decision GC18/19, paras 4.15 and 4.17.

⁷⁸ Decision GC05/19, paras 9.12 and 9.16.

14. The Licence Holder shall financially support the Christchurch Casinos Charitable Community Trust established by the Deed of Trust dated 23 November 2021 to undertake the objectives and purposes set out in the said Trust Deed. The Licence Holder shall pay to the Trust, in respect of each full year of casino operations, commencing 1 April 2021, **not less than 0.7% of the Casino Win**, such payment in any one year never to be less than \$250,000. The Licence Holder is required to provide annually to the Commission an audited statement certifying the amount constituting 0.7% of the Casino Win, the amount paid by the Licence Holder to the Trust, and confirming that payment by the Licence Holder to the Trust has been made in accordance with condition 14.

[Emphasis added]

- 9.11 Provision continued to be made separately for the option of additional discretionary direct donations, with a requirement that any shortfall from a \$100,000 minimum be additionally paid to the charitable trust, as set out in condition 17, the material parts of which provide:

17. The Licence Holder shall ensure that payments under this condition are to charitable organisations which are primarily located in Christchurch or the Canterbury region and result in no direct commercial advantage to the Licence Holder. In the event that the Licence Holder fails to make payments under this condition totalling \$100,000 in any financial year, the shortfall shall be paid immediately to the Trust, such payment being separate from that required by condition 14.

- 9.12 The Queenstown Casino contains the following condition relating to its charitable trust.

15. The Licence Holder shall financially support the Independent Charitable Trust established by the Deed of Trust. The Licence Holder shall pay to the Trust, in respect of each full year of casino operations, **not less than 2.5% of the net profit from the operation of the Casino**, or \$100,000 per annum, whichever is the greater. The Licence Holder is required to provide annually to the Commission an audited statement certifying the amount constituting 2.5% of the net profit from the Casino, and confirming that payment by the Licence Holder to the Trust has been made in accordance with this condition.

[Emphasis added]

- 9.13 The Hamilton Casino contains the following condition relating to its charitable trust.

14. The Licence Holder shall financially support the Independent Charitable Trust established by the Deed of Trust. The Licence Holder shall pay to the Trust, in respect of each full year of casino operations, **not less than 1.5% of the revenue from the operation of the Casino (GST exclusive) before gaming tax**. The Licence Holder is required to provide annually to the Commission an audited statement certifying the amount constituting 1.5% of the revenue from the operation of the Casino before gaming tax, and confirming that payment by the Licence Holder to the Trust has been made in accordance with this condition.

[Emphasis added]

- 9.14 In summary:

- (a) Auckland and Christchurch casinos now have minimum contribution obligations based on a percentage (0.7%) of gambling turnover (casino win), supplemented by fixed sum minimums in each case and, in the latter case, with an additional fixed sum donation obligation as well.

- (b) Queenstown casino has minimum contribution obligations based on a percentage (2.5%) of net profit from the casino operation, supplemented by a fixed sum minimum.
- (c) Hamilton casino has minimum contribution obligations based on a percentage (1.5%) of revenue of the casino operation, without a fixed sum minimum.
- (d) As a general observation, charitable trust contribution obligations increased as casino venue licences were issued over time, with the first licensed casino at Christchurch originally having no minimum obligation condition at all and the most substantial obligations imposed on the Queenstown and Hamilton casinos.
- (e) When previously considered by the Commission, relative historic actual contributions by casinos to charitable trusts tended to reflect differences in the minimum obligation condition imposed.⁷⁹

Contribution obligations at Dunedin casino

9.15 DCL's current obligation is set out in condition 14 of the venue licence as follows:

- 14. The Licence Holder:
 - (a) shall establish and support financially an independent charitable trust, the purposes and objectives of which shall include the funding of the treatment of gambling disorders by persons and organisations in the community, and related activities. The Licence Holder shall pay to the trust, in each respect of each full year of the operation of the Casino, no less than \$52,000 a year. The deed of trust shall be in a form approved by the Authority or the Commission;
 - (b) may establish, and in any event shall fund, a charitable trust or trusts approved by the Authority or the Commission to be applied for the purposes of community and sport funding in Dunedin and the Otago region. The Licence Holder shall pay to the trust or trusts, in respect of each full year of the operation of the Casino, a sum equivalent to 1 % of the turnover of the gaming machines in the Casino after deducting goods and services tax, to a maximum of \$110,000 a year. Where the Licence Holder establishes the trust or trusts, the deed or deeds of trust shall be approved by the Authority or the Commission;
 - (c) the conditions 14(a) and (b) above may be reviewed in the event of duplicity of charitable funding or the funding of the treatment of gambling disorders arising from legislative changes under the current or any future gaming law review.

9.16 It should be noted that, while the wording of condition 14(b) commences with words indicating optionality ("may establish"), they are followed by words of clear obligation ("in any event, shall fund"). In the Commission's view, condition 14(b) provided an option to create one or more additional charitable trusts (that is, in addition to the one required by condition 14(a)). In the event that no additional trusts were established pursuant to condition 14(b), the condition required the trust established pursuant to condition 14(a) to receive the funding

⁷⁹ See para 9.12 of Decision GC05/19 (Christchurch casino renewal)

required by condition 14(b). It is understood that the Charitable Trust qualified to receive all payments under conditions 14(a) and (b).

- 9.17 DCL is currently the only casino in New Zealand that has a **maximum** level of required charitable trust funding. All other casinos in New Zealand now⁸⁰ have a condition in their licence which stipulates a minimum level of annual funding to an independent charitable trust and, unlike DCL, the minimum obligations involve percentages which are not limited to gaming machine operations only. DCL is also unique in having two separate provisions for trust funding, namely for funding a trust whose objects include gambling disorder treatment (with a fixed minimum) and for funding the same or other trusts to be applied for purposes of community and sporting activities in Dunedin and Otago (with a minimum percentage based on gaming machine turnover but also with a fixed cap).
- 9.18 The actual historical contribution by DCL proved to be more difficult to confirm than expected. Condition 14 provided separately for 2 payments, totalling up to \$162,000 annually, which technically could have been made to different trusts. It was confirmed in evidence that all payments were made to the same entity, the Charitable Trust, which has objects which would permit it to receive both payments.⁸¹ However, the CIR referred only to payments of \$110,000 annually, being the maximum sum payable under condition 14(b) only.
- 9.19 In re-examination of DCL's chief executive, Ms Dowding, the position was clarified⁸² – in addition to the \$110,000 paid annually under condition 14(b), DCL paid \$52,000 annually, the amount required by condition 14(a), to the Charitable Trust, which in turn paid that amount to IRD in partial satisfaction of DCL's liability to pay the Problem Gambling Levy, an amount payable by all gambling sector licence holders, under a process specified in Part 4, Subpart 4 of the Act and regulations provided for under section 319 of the Act.⁸³ Although the annual payments of \$52,000 were made by DCL each year, as required by condition 14(a), once DCL became liable to pay the statutory Problem Gambling Levy, the Charitable Trust is said to have on-paid the condition 14(a) funds in part satisfaction of the levy liability, in substance thereby for the benefit of DCL. The described practice explains the CIR referring only to annual payments of \$110,000, rather than the expected \$162,000.
- 9.20 Confirmation of the described practice was not available from the Casino's annual charitable trust reports required under the Licence conditions. Prior to decision GC05/22, condition 15 of the Licence provided as follows:

⁸⁰ Christchurch Casinos Limited did not have a minimum funding obligation until a condition amendment on renewal of its casino venue licence in 2019.

⁸¹ Transcript, evidence of D Dowding, page 20, lines 4-17.

⁸² Transcript, D Dowding, page 25, line 4 to page 26, line 16.

⁸³ See paragraphs 8.6 and 87 above for more details.

15. The Licence Holder is required to ask the Trust on an annual basis to provide a list of persons granted funding for the previous year and in what amount, and a list of unsuccessful applicants for funding. The Licence Holder is required to publish annually the amount paid to the Trust, and the information provided to it by the Trust relating to the allocation of funds, as specified in this condition.

9.21 In decision GC05/22, the original condition 15 of the Licence was replaced by new conditions 15 and 16 as follows:

15. The Licence Holder is required to ask the Trust to provide it with the information set out in condition 16(b)-(f) below.
16. The Licence Holder must maintain a dedicated web presence that makes information about the Trust publicly available. At a minimum, the web presence must contain the following information:
 - (a) The trust deed;
 - (a) details of the Trustees and a brief summary of their background;
 - (b) information about how to apply for funding from the Trust, including contact details;
 - (c) the process that the Trust follows when dealing with complaints about the distribution of funding;
 - (d) grant application criteria;
 - (e) distribution information in respect of each financial year, commencing from the year ending on 31 March 2022, namely:
 - (i) the amount received by the Trust;
 - (ii) the amount available for distribution;
 - (iii) details of all distributions, including details of the recipients, their location, and the amount distributed to each;
 - (iv) details of all unsuccessful applications and the sums sought by each;
 - (f) If the Trust has failed to provide any of the information requested under condition 15, a statement identifying what has not been provided.

9.22 The Commission was able to access the published reports only for the period May 2019 to May 2024. None of those reports recorded the amounts paid by DCL to the Charitable Trust in any year of that period. Nor did any report record any payment by the Charitable Trust to the IRD, as neither the IRD nor DCL were listed among the grants made in any period. No report recorded any refusal by the Charitable Trust to provide information. The failure to report the amounts paid and the amounts distributed fully meant that the described practice of the Charitable Trust of making payments to benefit DCL ultimately was not apparent from the published reports. The Commission strongly suggests that DCL ensures that it complies properly with the reporting requirements of conditions 15 and 16 in the future (and leaves it to the Secretary to decide whether to investigate past non-compliances with the Licence conditions).

9.23 Counsel for DCL queried⁸⁴ why no amendment to condition 14(a) had been made following the imposition of the statutory requirement to pay a Problem Gambling Levy, despite the provision for review in that event set out in condition 14(c). The short answer is that such no review was sought by DCL and, when the Commission proposed a review of condition 14 twice previously, in both August 2007⁸⁵ and April 2021,⁸⁶ DCL opposed any revision of, or amendment to, condition 14.

Submissions and evidence

9.24 The written submission by DCC encouraged the Commission to consider increasing the charitable trust obligation, by increasing the turnover percentage (and increasing or removing the maximum of \$110,000 yearly) required to be paid to the Charitable Trust by the Casino.⁸⁷

9.25 For its part, DCL effectively sought an overall reduction in its community contribution obligation by removing the condition 14(a) obligation and increasing the condition (b) amount by less than the value of the deleted condition (a) obligation. In its written reply submissions, DCL asked the Commission to take the following matters into account:⁸⁸

- (a) DCL is a small casino, located in a small city in comparison to other casinos in other cities.
- (b) DCL pays a series of taxes, including company, GST, gaming duty and problem gambling levies in addition to its contributions to the Charitable Trust.
- (c) DCL has made significant investment in updating its compliance with the new anti-money laundering and HRP standards.
- (d) In addition to the funds required to be paid to the Trust, DCL has its own discretionary grants and sponsorship programme. In 2023, DCL made direct grants of \$146,000 to various groups and entities.

9.26 The issue was addressed in the written statement of evidence of Dominique Dowling, the CEO of DCL, the main points of which are as follows:

- (a) DCL regularly provides direct corporate sponsorships. When added to the Charitable Trust distributions, they total over \$260,000 annually. DCL's preference

⁸⁴ Transcript, submissions page 13, line 19 to 27; D Dowling, page 26, line 17 to line 20.

⁸⁵ Decision GC01/08, para 4.3

⁸⁶ Decision GC18/21, para 22

⁸⁷ DCC submission dated 28 May 2024 at [5].

⁸⁸ DCL's reply submissions at [25].

is to make its own decisions on maximising local community benefit, rather than having those decisions made by the Charitable Trust.

- (b) The unique maximum cap is understood to have been agreed when the original licence was negotiated.
- (c) The Casino has experienced diminished demand since Covid-19, which has resulted in a reduction in staff numbers and the number of EGMs and gaming tables open. However, it expects that its revenue position will improve in the future.
- (d) Although of a similar sized to the Queenstown casino, it operates differently, without the benefits of group cost centralisation and with a smaller customer catchment.
- (e) Changes to the condition are not opposed entirely but DCL seeks certainty. For that reason, it seeks retention of a maximum cap but suggests other changes, being:
 - (i) calculation of the minimum payment using a basis of 0.7% of annual casino win;
 - (ii) an increase in the maximum annual cap from \$110,000 to \$150,000; and
 - (iii) removal of the provision regarding funding of the treatment of gambling harm, in the light of the Problem Gambling Levy.⁸⁹

9.27 Possible changes to the charitable trust conditions were also addressed in the oral submissions for DCL and in oral evidence of Ms Dowding as follows:

- (a) All charitable trust funds should be directed to local community and sports purposes, with no separate provision made for problem gambling treatment.⁹⁰
- (b) The Casino differs from other casinos in relation to its operating environment and head office costs.⁹¹
- (c) The Casino wishes to have the certainty of a fixed maximum annual contribution.⁹²
- (d) It acknowledged that the proposal to remove condition 14(a) and increase the maximum sum in condition 14(b) to \$150,000 would be an overall reduction of

⁸⁹ This is understood to be a reference to condition 14(a) which currently requires an additional and separate payment of \$52,000 annually.

⁹⁰ Transcript, submissions, page 14, line 4 to 12, D Dowding, page 22, line 31 to page 23, line 12.

⁹¹ Transcript, submissions, page 15, lines 8 to 13; D Dowding,

⁹² Transcript, submissions, page 14, line 27 to page 15, line 2; D Dowding, page 22, line 18 to 25

\$12,000 per annum but the reduction would be justified by the additional direct donations that it makes.⁹³

- (e) While the current and past direct donations were acknowledged to be voluntary, rather than condition obligations, the Casino was open to making direct donations a licence condition.⁹⁴

Analysis

9.28 The Commission makes the following observations concerning the matters raised above:

- (a) Differences in casino size and market conditions can be equitably addressed by adoption of a minimum contribution based on a percentage of casino win. Differing conditions between casinos and over time support the use of a percentage of gambling turnover in preference to fixed amounts, whether minimum or maximum.
- (b) Adopting a percentage of casino win removes the need to impose a fixed sum minimum to ensure that “money from gambling” benefits the community. Fixed minimums may be appropriate in cases where the contributions are based on annual profit.
- (c) The Commission does not favour the continued use of fixed amounts in community benefit conditions in any form, whether as a minimum or a maximum. Such conditions are not durable because inflation undesirably reduces the real benefit to the community of any fixed sum over time.
- (d) The payment of taxes, including company, GST, gaming duty and problem gambling levies, is common to all casinos and is expected to be similarly proportionate to their actual gambling activity. All casinos are required to invest in their HRPs and similar compliance systems. None of these factors are points of genuine distinction for DCL.
- (e) The sole point of apparent distinction is a possible difference in net operating costs (because of not sharing head office functions between several casinos or in having more sources of revenue). However, the Commission was not provided with any comparative data concerning operating costs and, in any event, doubts that such differences would justify the community receiving a lower relative benefit (any more than implementing cost savings or increasing non-gambling revenue at casinos should result in increased community benefit obligations).

⁹³ Transcript, D Dowding, page 23, line 13 to line 32.

⁹⁴ Transcript, D Dowding, page 20, line 18 to 25; page 23, line 30 to page 24, line 2.

- (f) All casinos have an established practice of making direct corporate donations, outside the compulsory contributions to their charitable trusts. The Commission has concluded that they view it as in their interests to do so and that the practice would continue whether or not it is imposed as a licence condition. The Christchurch casino is unique in that it currently has the option of direct donation to satisfy part of its community benefit condition obligations. The Commission does not consider that an obligation in that form should be replicated elsewhere.
- (g) Since statutory Problem Gambling Levy obligations were introduced in late 2004, there has not been a sound case for maintaining separate condition contributions referable to treatment of gambling disorders. While the current condition 14(a) only controls the nature of the recipient trust, rather than the application of its subsequent distributions, there is no good reason for such separate contribution provisions to continue.

9.29 The Commission aims to impose licence conditions regarding the level of community contribution that are consistent, fair, equitable and durable. In the Commission's view, casino win is the fairest basis for fixing casino community contribution obligations. Use of a percentage of casino win is particularly appropriate when casinos differ materially in their size and in the revenue performance of their gambling operations at any one time and over time. It most closely connects "money from gambling" to benefit to the community and provides sufficient certainty for casinos in managing their obligations under the condition.

9.30 The Commission favours imposing a single obligation to make annual contributions, based on a percentage of annual casino win to the Charitable Trust, to be applied for the purposes and objects set out in its trust deed. It does not consider that the condition needs to specify further the matters to which the funds are to be applied. As the basis for the minimum amount would be casino win, a measure of gambling activity turnover rather than profit, there is no reason to include a fixed sum minimum. Such a condition strikes the Commission as both straightforward and fair.

9.31 While the Commission gave consideration to providing in the licence conditions for direct donations by the Casino in addition to contributions to the Charitable Trust, it decided against doing so for the reasons set out in paragraph 9.28(c) and (f) above.

9.32 In deciding the appropriate percentage of casino win, the Commission had regard to the following matters:

- (a) The percentages currently imposed at Auckland and Christchurch did not follow a comprehensive review which were intended to have long term effect. That is the case, despite the fact that the charitable trust condition was amended in the course

of the Christchurch casino venue licence renewal and subsequently, because both decisions were expressly interim only and largely based on the Auckland casino amendment decision to similar effect.

- (b) The historical charitable trust conditions varied materially across casinos because they arose from the original casino premises applications, rather than any considered decision by the Authority under the Casino Control Act 1990. Unlike the Gambling Act 2003, the Casino Control Act 1990 contained neither a purpose of ensuring that money from gambling benefitted the community nor a provision permitting the Authority to impose licence conditions for that purpose. They were inserted simply to reflect voluntary promises made by the successful applicant in each case.
- (c) Having earlier decided that, as a matter of general principle, community contribution obligations should be retained,⁹⁵ the Commission approaches revision on the basis that strong reasons would be required to reduce the effect of the original community contribution obligations. In some circumstances, it may be appropriate to increase the original obligations.
- (d) There is nothing in the circumstances of DCL which supports an overall reduction in its community contribution obligations.

9.33 In the light of those considerations, the Commission decided by a majority that the appropriate percentage of the Casino's Casino Win should be set at 1%, with no minimum or maximum.

9.34 The Commission consequently decided to amend condition 14 of the Licence by replacing it with the following condition:

- 14. The Licence Holder shall financially support the Dunedin Casinos Charitable Trust established by the Deed of Trust dated 16 June 2000 to undertake the objectives and purposes set out in the said Trust Deed. The Licence Holder shall pay to the Trust, in respect of each full year of casino operations, commencing 1 April 2025, not less than 1% of the Casino Win. The Licence Holder is required to provide annually to the Commission an audited statement certifying the amount constituting 1% of the Casino Win, the amount paid by the Licence Holder to the Trust, and confirming that payment by the Licence Holder to the Trust has been made in accordance with this condition 14.

9.35 Apart from the associated addition of a definition of "Casino Win" to the definition condition of the Licence conditions, it decided to make no other amendments to the Licence conditions.

⁹⁵ Decision GC18/21

10. DECISION

10.1 For the reasons set out in sections 5 to 7 inclusive above, the Commission is satisfied that DCL’s casino venue licence should be renewed and grants the application for renewal accordingly, pursuant to section 137.

10.2 In addition, it makes orders under section 139(1)(b) varying the conditions attached to DCL’s casino venue licence as follows:

(a) Adding the following new definition to condition 4:

4 **Casino Win** has the same meaning as Casino Win in section 12M of the Gaming Duties Act 1971

(b) Replacing the current condition 14 with the following condition:

14. The Licence Holder shall financially support the Dunedin Casinos Charitable Trust established by the Deed of Trust dated 16 June 2000 to undertake the objectives and purposes set out in the said Trust Deed. The Licence Holder shall pay to the Trust, in respect of each full year of casino operations, commencing 1 April 2025, not less than 1% of the Casino Win. The Licence Holder is required to provide annually to the Commission an audited statement certifying the amount constituting 1% of the Casino Win, the amount paid by the Licence Holder to the Trust, and confirming that payment by the Licence Holder to the Trust has been made in accordance with this condition 14.



Susan Hughes KC
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

26 February 2025

