

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

**AND** an appeal by **DRAGON COMMUNITY TRUST LTD** against refusal of class 4 venue licence application for **“THE AWESOME FARMER”**

**BEFORE THE GAMBLING COMMISSION**

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

Date of filing of Appeal: 27 March 2024

Date of Decision: 12 July 2024

Date of Notification of Decision: 24 July 2024

**DECISION ON AN APPEAL BY DRAGON COMMUNITY TRUST LTD AGAINST REFUSAL OF CLASS 4 VENUE LICENCE APPLICATION FOR “THE AWESOME FARMER”**

**Introduction**

1. Dragon Community Trust Ltd (“**Appellant**” or “**DCT**”) appeals to the Gambling Commission (“**Commission**”), under section 77(1)(a) of the Gambling Act 2003 (“**Act**”, all statutory references are to this Act unless otherwise stated), against a decision by the Secretary for Internal Affairs (“**Secretary**”) refusing to grant to the Appellant a class 4 venue licence for The Awesome Farmer tavern in the Auckland CBD (the “**Venue**”).

**Background to appeal**

2. The Venue is a tavern at 74 Wyndham Street, Auckland CBD, previously known as The Muddy Farmer. From 22 September 2017, a class 4 venue licence was held by the Appellant for gaming machines to be operated at the Venue.
3. Between 2013 and 2023, the Venue was operated by Frankies Bar & Restaurant Limited (“**Frankies**”) and managed by Meisheng Zhu, the sole director and shareholder of Frankies, under the Venue’s former name, The Muddy Farmer.
4. In April 2020, Frankies applied to renew its alcohol on-licence (a tavern licence) for the Venue. Frankies failed to comply with the applicable public notification requirements for the renewal application and applied for them to be waived. On 14 April 2023, the Auckland District Licencing Committee (“**DLC**”) issued a decision declining to waive the public

notification requirements. As a consequence, the existing on-licence expired and the Venue was closed to the public.

5. The Appellant, as the Class 4 venue licence holder, was required<sup>1</sup> to notify the Secretary if class 4 gambling had not been conducted at the Venue for a period of more than four weeks. On 25 May 2023, the Appellant notified the Secretary that class 4 gaming had not operated at the Venue for four weeks and asked the Secretary to agree that the Venue was permitted to remain inactive for a further period. On 16 June 2023, the Secretary notified the Appellant that he declined to agree to an extended period of inactivity, triggering an obligation, under section 71(1)(g), to surrender the then current class 4 venue licence. On 21 June 2023, the Appellant surrendered the class 4 venue licence for the Venue.
6. On 17 August 2023, the Appellant applied for a new class 4 venue licence in respect of the Venue. The Venue was proposed to be operated by AMWA Ltd (“**AMWA**”) and managed by Meisheng Zhu, the sole director and shareholder of AMWA. AMWA shared identical directorship and shareholding with Frankies, which had operated the Venue between 2013 and 2023.
7. Applications for a class 4 venue licence are required to be accompanied by “evidence that the class 4 venue is not to be used mainly for operating gaming machines”.<sup>2</sup> The application stated that the Venue’s primary function was to be a tavern. The application did not provide evidence of an alcohol on-licence for the Venue permitting the conduct of that activity. In the absence of evidence of an on-licence, the Secretary considered the application to be incomplete and asked the Appellant to provide evidence that the Venue would not be used mainly for class 4 gambling.
8. DCT advised the Secretary that an on-licence had been applied for, but not yet granted, and that a hearing for the alcohol licence was to be held in December 2023. The Secretary sought updates from the Appellant on the progress of the on-licence application on 26 October 2023, 8 November 2023, 13 December 2023 and 29 January 2024. On 31 January 2024, the Appellant advised that the on-licence application had been declined by the DLC on 9 January 2024 and asked the Secretary to place its class 4 venue licence application “on hold” for two weeks.
9. On 14 March 2024, the Secretary notified his decision to refuse to grant the class 4 venue licence. After investigation under section 66, he was neither satisfied that the venue would not be used mainly for operating gaming machines nor that the proposed venue manager and key person, Meisheng Zhu, was a suitable person.<sup>3</sup> Under section 67(1)(c) and (k),

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<sup>1</sup> Section 71(1)(g).

<sup>2</sup> Section 65(2)(j).

<sup>3</sup> In terms of section 68 for the purposes of ss 66 and 67.

the Secretary is required to refuse to grant a class 4 venue licence unless satisfied of both matters, among others.

10. On 27 March 2024, the Appellant lodged an appeal with the Commission under section 77(1)(a). The Appellant subsequently provided the Secretary with new information, for the purposes of amending the class 4 venue licence application, although it had already been declined by the Secretary on 14 March 2024. The information, in the form of further correspondence subsequently annexed to Kevin Tran's affidavit at exhibit "I", is as follows:
  - (a) On 15 April 2024, the Appellant requested amendments to the venue licence application including changes to the proposed venue operator, venue manager, venue name and key person and gave an assurance that the Venue would not operate before alcohol could lawfully be sold at the Venue;
  - (b) On 17 April 2024, the Appellant advised that an alcohol licence application for the Venue had been amended to a "tavern" style application; and
  - (c) On 14 May 2024, the Appellant provided the Secretary with an updated harm minimisation policy for the Venue.
11. The timing of a class 4 venue application is potentially critical when determining the application. Territorial authority consent (in this case, from Auckland Council) is required if a corporate society applies for a class 4 venue licence and a class 4 venue licence has not been held by any corporate society for the venue within the last 6 months.<sup>4</sup> The six-month period after surrender of the earlier venue licence ended on 21 December 2023. The Appellant, a class 4 operator licence holder, had applied for a new venue licence for the Venue on 17 August 2023.
12. The Auckland Council operates a "sinking lid" policy on consent for new class 4 venue licences meaning that if the Appellant made a new application for a venue licence after 21 December 2023, it would have been unlikely to obtain the necessary territorial authority consent. Following lodging its appeal, the Appellant asked to amend the application, proposing a new venue operator, new venue manager, new venue name, new key person and new principal use.
13. The Appellant seeks to appeal the decision on the original application based on the amended details as described, as having been brought within the section 98(b) statutory window, rather than making a new application.

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<sup>4</sup> Section 98(b).

### **Decision under appeal**

14. The Secretary issued a decision letter dated 14 March 2024, advising that the reason for refusing the application for a class 4 venue licence was his lack of satisfaction with two essential matters.

#### *Venue not used mainly for operating gaming machines*

15. The Secretary was not satisfied that the Venue would not be used mainly for operating gaming machines. While the Venue's proposed primary purpose was stated to be a 'tavern',<sup>5</sup> an application for an on-licence for the Venue had been declined in January 2024 so it could not be lawfully operated for its stated primary purpose. No evidence had been provided that the venue would be mainly used for any other purpose.

#### *Lack of suitability of Meisheng Zhu (key person)*

16. When considering the suitability of a key person, the Secretary is empowered to investigate and take into account a number of matters, including the key person's previous compliance with the Act, minimum standards, game rules, Gazette notices, and licence conditions and "any other matter that the Secretary considers relevant".<sup>6</sup>
17. The proposed venue manager and a key person for the purposes of the venue licence application was Meisheng Zhu. Mr Zhu was the director and shareholder of both the proposed venue operator, AMWA, and the previous operator, Frankies, and is the owner of the Venue, either directly or through another company. As Mr Zhu had a history of non-compliance with gambling regulatory obligations, the Secretary was not satisfied that he was suitable as a key person or a venue manager for a class 4 licence venue. Mr Zhu's compliance profile showed a pattern of non-compliance (including nine recorded breaches of the Act for late banking of gaming machine proceeds, six formal warning letters and an infringement notice) and a lack of understanding of his legal responsibilities.
18. A further concern was the DLC decision of 9 January 2024 declining applications for the Venue's on-licence and a manager's certificate for Mr Zhu by reason of numerous compliance failures with alcohol regulatory obligations, indicating a generally reckless approach to regulatory compliance. The DLC had also found that Mr Zhu lacked knowledge of his alcohol regulatory and company administration responsibilities.
19. As a result of Mr Zhu's pattern of non-compliance with alcohol, gambling and company administration, the Secretary was not satisfied that he was a suitable person who would comply with class 4 gambling obligations at the Venue.

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<sup>5</sup> As defined in the Sale and Supply of Alcohol Act 2012, s 5(1) as a: "premises used or intended to be used in the course of business principally for providing alcohol and other refreshments to the public".

<sup>6</sup> Section 68(1)(c) and (d).

## Relevant legislation

20. The following provisions of the Gambling Act 2003 are relevant to the grant of a new class 4 venue licence:

### 65 Application for class 4 venue licence

- (1) A corporate society may apply to the Secretary for a class 4 venue licence.
- (2) An application must be on the relevant standard form and be accompanied by—
  - (a) a description of the venue and its location; and
  - (b) a territorial authority consent if required under section 98; and
  - ...
  - (e) a profile of the venue manager and the venue operator, including details of their experience in conducting class 4 gambling, character, and qualifications; and
  - ...
  - (j) evidence that the class 4 venue is not to be used mainly for operating gaming machines; and
  - ...
  - (l) evidence that the venue is suitable in all other respects to be a class 4 venue.
- ....
- (5) The Secretary may return an incomplete application, and the accompanying documents and any fee, to an applicant.
- (6) The Secretary may request from the applicant any further information that the Secretary considers necessary to consider the application properly.

### 66 Secretary must investigate applicant for class 4 venue licence

- (1) The Secretary must undertake any investigations the Secretary considers necessary to determine—
  - ...
  - (b) whether the venue manager and venue operator are suitable persons in terms of section 68.
- (2) The Secretary may undertake whatever investigations the Secretary considers necessary to determine whether any other key person is a suitable person in terms of section 68.

### 67 Grounds for granting class 4 venue licence

- (1) The Secretary must refuse to grant a class 4 venue licence unless the Secretary is satisfied that—
  - ...
  - (c) the venue manager is an individual and any investigations carried out by the Secretary do not cause the Secretary not to be satisfied about his or her suitability, in terms of section 68, to supervise—
    - (i) the conduct of class 4 gambling at the venue; and
    - (ii) venue personnel; and
  - (d) any investigations carried out by the Secretary do not cause the Secretary not to be satisfied about the suitability of any other key person, in terms of section 68; and
  - ...

(f) the territorial authority has provided a consent (if required under section 98); and

....

(k) the class 4 venue is not used mainly for operating gaming machines; and

...

(q) the proposed venue is suitable in all other respects to be a class 4 venue; and

(r) there are no other factors that are likely to detract from achieving the purpose of this Act; and

(s) the applicant is able to comply with all other applicable regulatory requirements.

(2) If the Secretary decides to refuse to grant a class 4 venue licence, the Secretary must notify the applicant, or, if there is a venue agreement, the parties to the agreement, and the venue manager of—

(a) the reason for the decision; and

(b) the right to appeal the decision; and

(c) the process to be followed for an appeal under section 77.

#### **68 Determining suitability for class 4 venue licence**

(1) In determining whether a key person is a suitable person for the purpose of sections 66 and 67, the Secretary may investigate and take into account the following things:

(a) whether he, she, or it has, within the last 7 years,—

(i) been convicted of a relevant offence:

(ii) held, or been a key person in relation to, a class 3 or class 4 operator's licence, a class 4 venue licence, a casino licence, or a licensed promoter's licence under this Act or any licence under previous gaming Acts that has been cancelled, suspended, or for which an application for renewal has been refused:

(iii) been placed in receivership, gone into liquidation, or been adjudged bankrupt:

(iv) been a director of a company that has been placed in receivership or put into liquidation, and been involved in the events leading to the company being placed in receivership or put into liquidation:

(v) 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:

(vi) 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:

(b) the financial position and the credit history of the key person:

(c) the profile of past compliance by the key person with—

(i) this Act, minimum standards, game rules, Gazette notices, and licence conditions; and

(ii) the Racing Industry Act 2020 or the previous racing Acts (and any rules of racing made under any of those Acts); and

(iii) previous gaming Acts, and regulations made under previous gaming Acts; and

(iv) a licence or a site approval issued under a previous gaming Act; and

(d) any other matter that the Secretary considers relevant.

(2) The Secretary may take into account matters of a similar nature to those listed in subsection (1) that occurred outside New Zealand.

21. Section 66(1)(f) refers to the requirement for satisfaction that territorial authority consent has been obtained if required by section 98, which provides:

**98 When territorial authority consent required**

A territorial authority consent is required in the following circumstances:

....

(b) if a corporate society applies for a class 4 venue licence and a class 4 venue licence has not been held by any corporate society for the venue within the last 6 months:

22. An appeal to the Commission against a decision by the Secretary to refuse to grant a class 4 venue licence is provided for by section 77, as follows.

**77 Appeal to Gambling Commission regarding class 4 venue licence**

(1) A corporate society or, if there is a venue agreement, the parties to the agreement, and the venue manager may appeal to the Gambling Commission against a decision of the Secretary to—

(a) refuse to grant a class 4 venue licence to the corporate society; or

....

(2) An appeal must be in writing and must be made within—

(a) 15 working days after the date of the notice of the Secretary's decision; or

(b) any longer period that the Gambling Commission allows if an application for an extension is made within the time period specified in paragraph (a).

(3) The Gambling Commission—

(a) may request any information from the corporate society or the parties to the agreement or the venue manager or the Secretary; and

(b) is not bound to follow any formal procedure; and

(c) does not need to hold a hearing; and

(d) must consider any information provided by the corporate society, or the parties to the venue agreement, and the venue manager and the Secretary.

(4) The Gambling Commission may—

(a) confirm, vary, or reverse the decision of the Secretary; or

(b) refer the matter back to the Secretary with directions to reconsider the decision.

(5) The Gambling Commission must give notice of—

(a) its decision, with reasons, to the corporate society, or the parties to the venue agreement, and the venue manager and the Secretary; and

(b) the date on which its decision takes effect (which may be a date that is later than the date on which it makes the decision).

23. Several of the terms appearing in the relevant provisions have statutory definitions,<sup>7</sup> as follows:

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<sup>7</sup> Section 4.

**class 4 venue** means a place used to operate class 4 gambling;<sup>8</sup>

**key person** means, ....

(b) in relation to a class 4 venue licence, -:

(i) a venue manager:

(ii) venue personnel:

(iii) a venue operator;

(iv) person who is a director, chief executive, or senior manager of a venue operator:

(iva) a person who has a significant interest in the management, ownership, or operation of a venue operator, ....

(ivb) a person who has the ability, directly or indirectly, to exert a significant degree of influence over the management or operations of a venue operator, ....

**Venue manager** means 1 natural person responsible for supervising the gambling and venue personnel at a class 4 venue and for banking the proceeds of class 4 gambling

**Venue operator** means the occupier of a class 4 venue for which the licence application was required under section 65(3) to be accompanied by a class 4 venue agreement where the occupier owns the primary business at the venue.

24. In addition, the Commission is guided by the purpose of the Gambling Act which, as set out in section 3, is to:

(a) control the growth of gambling; and

(b) prevent and minimise harm from 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 the conduct of gambling; and

(g) ensure that money from gambling benefits the community; and

(h) facilitate community involvement in decisions about the provision of gambling.

### **Appellant's submissions**

25. The submissions for the Appellant may be summarised as follows:

(a) The Commission hears class 4 venue appeals *de novo*,<sup>9</sup> having regard to information then before it, irrespective of whether the Secretary had the information when his decision was made. The Commission does not need to find that the Secretary erred.<sup>10</sup>

(b) The information now before the Commission should satisfy it about the suitability of the currently proposed key person, Kevin Tran, and the intended primary use

<sup>8</sup> The meaning of class 4 gambling is set out in section 30 and comprises a set of criteria.

<sup>9</sup> Section 77((3)(d).

<sup>10</sup> Citing the Commission's Practice Note, *The Lion Foundation* GC06/06, *The Trillian Trust* GC20/12, *Bluegrass Holdings* GC38/12.

of the venue, being the matters of which the Secretary was not satisfied previously.

- (c) Kevin Tran's company, Muddy Farmer Limited, has entered into an agreement (dated 26 March 2024) to purchase the Venue business from Meisheng Zhu (the originally proposed venue manager) and to enter into a lease with the landowner (a company owned by Mr Zhu). Payment of the purchase price and lease payments are to be made only after the issue of an alcohol licence.
- (d) Mr Tran's company is intended to be the new venue operator; it has entered into a venue agreement with DCT, under which Mr Tran will be the venue manager. Mr Tran's evidence establishes his suitability, by virtue of a lack of prior convictions or breaches. He advised that he has no prior class 4 experience but he has received training from DCT and that its representatives are available to provide assistance if required.
- (e) Mr Tran's evidence advises that Meisheng Zhu continues to have an ownership interest in the Venue building, but that Meisheng Zhu is not a key person as he is no longer the proposed venue manager, and his company, AMWA Ltd, is no longer the proposed venue operator, and he will have no practical association with the operation of the Venue.
- (f) All key persons at the venue are suitable and the Appellant would not object to the Secretary undertaking further inquiries, if necessary.
- (g) The Venue has not yet been granted an alcohol licence but an application for one has been made. An alcohol licence is not a legal requirement for the grant of a licence and a primary use of the Venue other than class 4 gambling may be established by other evidence or suitable conditions imposed.<sup>11</sup>
- (h) There is no legal requirement to conduct class 4 gambling immediately after the issue of a class 4 venue licence.
- (i) The Commission may be satisfied about primary use by the affidavit evidence of Kevin Tran. Mr Tran's evidence is that the Venue will operate as a large Irish pub and the gaming area will be less than 10% of the floor area and not prominent.

26. The Appellant's submissions pointed to similarities to the circumstance of the decision in *New Zealand Racing Board - TAB Mangere Bridge*.<sup>12</sup> In that decision, a venue licence

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<sup>11</sup> Relying on *The Southern Trust Inc/Te Wheke Holdings* GC17/07, *Grassroots Trust* GC09/20 and *Youthtown Inc* GC10/20.

<sup>12</sup> *New Zealand Racing Board - TAB Mangere Bridge* decision GC05/17.

application had been submitted on 19 October 2015 and the Secretary treated the application as complete for the purpose of section 65. Almost a year later, on 30 September 2016, the Secretary gave notice of a decision to refuse the venue licence application on the grounds that the venue manager was unsuitable, and the failure to provide a signed lease. While holding that the Secretary was right to be dissatisfied of the grounds raised, the Commission was satisfied, on a *de novo* consideration, about the suitability of the later proposed manager and the later lease information provided, referring the application back to the Secretary for any further assessments required.

27. It was suggested that concerns about the proposed primary purpose, which cannot operate without an alcohol licence, could be addressed by a primary purpose condition in the licence. The submissions did not set out the proposed condition but, in his affidavit, Xiaoli Wang, the chairperson of DCT, deposed that DCT will ensure that gaming machines at the venue will not be operated until an alcohol licence has been obtained and alcohol is available for sale.<sup>13</sup>

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

28. The Secretary opposed the appeal on the grounds that the notice of appeal discloses “no reasonably arguable cause of action”; and that the purpose of the appeal is improper, being to preserve the application’s original date, in order to avoid triggering a requirement for the consent of Auckland Council (as the relevant territorial authority) to a new class 4 venue licence.
29. As to the first ground:
- (a) The background to the appeal was summarised, covering the loss of the Venue alcohol licence, its closure and the surrender of the class 4 venue licence on 21 June 2023, an application for a new licence on 17 August 2023, subsequent contact by the Secretary regarding an alcohol licence for the premises, advice on 31 January 2024 that the an alcohol licence sought had been declined by reason of the unsuitability of the key person and a request to place the application on hold for two weeks to allow for a sale of the business.
  - (b) The hold request was refused on 1 February 2024 and the decision to refuse the application was notified on 14 March 2024.
  - (c) After the appeal dated 27 March 2024 was filed, the Appellant sent new information to the Secretary requesting comprehensive amendment to the declined application, including replacement of the venue operator, venue manager, venue name and key person, an amended alcohol licence application

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<sup>13</sup> At para 8.

and an updated harm minimisation policy. The Secretary refused to amend the declined application and invited the Appellant to submit a new application instead, which the Secretary regards as the appropriate course having regard to the significance of the changes, the passage of time since the surrender and the clear unsuitability of the originally proposed key person.

- (d) The Appellant does not contest any substantive aspect of the Secretary's decision. It is brought in an attempt to subvert statutory processes by avoiding the requirement for territorial authority consent.

30. As to the impropriety of the appeal:

- (a) The attempted use of the appeal process and the Commission's *de novo* jurisdiction to consider an application afresh (on appeal), nine months after a licence was last held for the venue and a year after gambling was last conducted at the venue, contradicts Parliament's intention that territorial authority consent should be required in such circumstances.
- (b) Under section 98(b), territorial consent is required if the application is made more than 6 months after a licence ceased to be held. A new licence application made after 21 December 2023 would require territorial consent. The relevant authority, Auckland Council, has a 'sinking lid' policy of refusing to consent to new venue applications.
- (c) The application was filed on 17 August 2023 without any evidence that the Venue would not be used primarily for gambling. Rather than returning the application as incomplete, the Secretary made inquiries about the primary purposes and was told that an alcohol licence had been applied for and would be heard in December 2023. The Secretary sought updates periodically. At no stage did the Appellant ask for the application to be determined on the information already provided.
- (d) As the DLC declined the alcohol licence applications on 9 January 2024, by reason of the unsuitability of Mr Zhu, it would have been obvious that the class 4 venue application would similarly be refused.
- (e) The Secretary was not prepared to reconsider an amended application in the circumstances.
- (f) The circumstances are similar to those in the Commission's decision in an appeal by *Infinity Foundation* GC07/07 in which a licence was cancelled by reason of lack of key person suitability, an appeal was filed but did not challenge the correctness of the Secretary's decision and instead relied on new evidence

about the suitability of new key persons who had only become involved by purchasing the business after the decision had been made. The Commission held that the appeal had been brought to obtain the benefit of an automatic statutory stay of the cancellation in order to facilitate a sale of the business to a third party, that that was not a legitimate use of the appeal process and struck out the appeal as an abuse of process.

- (g) The *New Zealand Racing Board - TAB Mangere Bridge* decision (GC05/17), relied on by the Appellant, is distinguishable in the light of the unique circumstances of that case, namely the unexpected existence of a limited period within which an application could be made prior to the commencement of a new statutory restriction. It followed a related appeal decision in which the Secretary had been directed to re-hear the application which had been earlier declined in anticipation of the statutory amendment. In those unusual circumstances, the Commission saw nothing to indicate a Parliamentary intention to read down the express appeal powers under the Act, with the result that it could have regard to new information before it. However, the decision is distinguishable from the current case because the appellant in *TAB Mangere Bridge* had challenged the substantive decision and because statutory changes were made in 2013 with the intention of conferring new consent rights on territorial local authorities.

31. The last point arose from a recent decision of the High Court in *Feed Families not Pokies Aotearoa Inc v Secretary for Internal Affairs*<sup>14</sup> in which the Court addressed the issue of processes designed to avoid the triggering of territorial authority consent, albeit in the context of relocation of venues. The Court held that “minor” venue relocations, which had previously been held in an earlier High Court decision, “*Waikiwi*”,<sup>15</sup> not to trigger the need for territorial authority consent, were not exempt from the need for territorial authority consent since a 2013 amendment. The Secretary argued that that decision, and the Commission’s earlier recognition<sup>16</sup> that community involvement in decisions about gambling provision was part of the statutory purpose (section 3(h), meant that appeal processes should not be allowed to subvert the statutory requirement for territorial authority consent.
32. In summary, the Secretary contended that the appeal was brought improperly, seeking to avoid a statutory requirement reflecting part of the purpose of the Act and that the Secretary’s decision should be confirmed.

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<sup>14</sup> *Feed Families not Pokies Aotearoa Inc v Secretary for Internal Affairs* [2024] NZHC 217.

<sup>15</sup> *ILT Foundation v Secretary for Internal Affairs* [2013] NZHC 1330.

<sup>16</sup> *The Trillian Trust*, GC20/12, at 55.

33. The Secretary chose to advance only those arguments and (although the Commission's directions did not provide for it), purported to reserve his position on the merits of the application other than on the basis of the material originally before him, rather than addressing the new information before the Commission. However, he indicated that he would not have accepted a promise not to operate gaming machines until the issue of an alcohol licence because of the requirements of section 71(1)g) and the likelihood of an obligation to surrender arising if the alcohol licence were not obtained within 4 weeks. He also raised section 67(1)(r) and (s), regarding satisfaction that there are no other factors likely to detract from achieving the purpose of the Act (with specific reference to section 3(h)) and that the applicant is able to comply with all regulatory requirements. Because of the position taken, the submissions for the Secretary addressed only the suitability of Mr Zhu and did not address the suitability of Mr Tran.

#### **Appellant's reply submissions**

34. In reply, the following submissions were made for the Appellant as to the absence of a "reasonably arguable cause of action":
- (a) The submission that appeal decisions can only be varied or reversed if the Secretary's original decision is wrong, ignores the *de novo* nature of the appeal right, under section 77(3)(d) that **requires** the Commission to consider new information provided by the parties.
  - (b) The Secretary's proposition was rejected in the decisions in *The Trillian Trust*,<sup>17</sup> *The Lion Foundation*<sup>18</sup>, *Bluegrass Holdings*<sup>19</sup> and the Commission's Practice Note (para 22).
  - (c) The Secretary appeared to suggest that process delays of more than 6 months in decision making should result in appeals failing if the territorial authority had a sinking lid policy but that is not supported by anything in section 67(1)(f) or 98. There is also nothing to indicate a legislative intention to limit the express appeal provisions after 6 months. Delays in decisions on applications in excess of 6 months are common.
  - (d) That time under section 98(b) is stopped by an application being brought within 6 months of the end of the earlier licence was confirmed by the Commission in

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<sup>17</sup> GC20/12, at para 54.

<sup>18</sup> GC06/06, paras 34-37.

<sup>19</sup> GC38/12, para 20.

*The Southern Trust Inc/Te Wheke Holdings*<sup>20</sup> and by the High Court in *Air Rescue Services v The Secretary for Internal Affairs*.<sup>21</sup>

35. On the question of abuse of process, the following submissions were made:
- (a) If the Secretary considered that the appeal was an abuse of process, the appropriate remedy was an application to strike out.
  - (b) There has been no abuse of process because the application and appeal were brought promptly. It was not an unmeritorious appeal brought to buy time.
  - (c) The Appellant was entitled to appeal and should not be required to bring a new application. The position is not materially different on appeal because the application is by the same society, with the same authorised purposes, at the same venue, with the same primary activity, the same floorplan and with the same GMV number and the same gaming machines. The change in the harm minimisation policy was the result of a regulatory change which came into force on 1 December 2023, which requires all venues to update their policies.
  - (d) The Appellant should be commended for responding to the Secretary's suitability concerns and replacing the proposed key person.
  - (e) Facilitating community involvement about the provision of gambling is only 1 of 8 elements in the statutory purpose.
36. The Appellant addressed concerns about the present inability of the Venue to conduct its proposed primary activity by pointing to the lack of an immediate requirement to conduct gambling activity from the date of issue of a venue licence. Speculation was offered about the pending issue of an alcohol licence by the time the Commission's decision is issued, the period of time which would be required for further key person checks (in the event that the decision were referred back by the Commission), and the time which the Secretary may take to issue a new decision. Once issued, the venue would then have a further 4 weeks to conduct gambling before the licence would require surrender under section 71(1)(g).
37. The High Court's decision in *Feed Families Not Pokies Aotearoa Inc*<sup>22</sup> was said not to be relevant as it concerns the application of the Act to minor "Waikiwi" venue relocations

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<sup>20</sup> GC17/07.

<sup>21</sup> CIV-2010-485-1919, 3 May 2011. In this decision, the High Court distinguished between the different steps required to protect grandparented rights under section 92(1)(b) (relating to preservation of historic machine numbers), and section 98 (described as "a local body veto right") with the latter requiring only an application within 6 months whereas the former requires a licence to be held within a 6 month period.

<sup>22</sup> *Feed Families not Pokies Aotearoa Inc v Secretary for Internal Affairs* [2024] NZHC 217.

following a 2013 statutory amendment and the present appeal concerns neither a relocation nor a statutory amendment.

38. The present case was said to be distinguishable from the *Infinity Foundation* decision, because the later involved an appeal concerning an existing licence, which had the effect of allowing the licence to continue in force pending the appeal decision, and because the present appeal is not without merit.

### **The issues**

39. Six issues arise for potential determination in reaching a decision whether to confirm, reverse, vary or refer back the Secretary's decision to refuse the application. The first two issues are broadly preliminary in nature, involving issues of statutory construction and application, namely:

- (a) does section 77(3)(d) require the Commission to decide the appeal having regard to the application amendments proposed and the new information provided after the appeal was filed, despite the potential effect of doing so on the application of section 98(b) in the particular circumstances; and
- (b) is the appeal improper, seeking to obtain an unintended benefit or advantage, such that it should be disposed of as an abuse of process without consideration of the merits.

These issues have the potential to dispose of the appeal. If the Commission declined to consider the amendments and the new information provided after the appeal was filed, it would be common ground that the Secretary's decision should be confirmed. The Appellant's case on appeal relies on the amendments and new information (with the Secretary having largely declined to make submissions addressing the new information). Similarly, if the Commission held that the appeal constituted an abuse of process, the Secretary's decision would be confirmed.

40. If not determined on the basis of the above two issues, the remaining four issues would require assessment by the Commission of the merits of the application, in the light of the information now before it, namely:
- (a) is the Commission satisfied that "the class 4 venue is not used mainly for operating gaming machines";<sup>23</sup>
  - (b) is the Commission satisfied that the Applicant "is able to comply with all other applicable regulatory requirements",<sup>24</sup> including section 71(1)(g);

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<sup>23</sup> Section 67(1)(k).

<sup>24</sup> Section 67(1)(s).

- (c) whether the Commission has no cause not to be satisfied about the suitability of either the proposed venue manager, Mr Tran, or any other key person;<sup>25</sup>
- (d) is the Commission satisfied that “there are no other factors that are likely to detract from achieving the purpose of this Act”.<sup>26</sup>

In reaching its decision on appeal, the Commission is subject to the same restrictions relating to satisfaction as applied to the Secretary under section 67. Consequently, if the Commission were not satisfied about any one of the grounds set out in section 67, it would be required to confirm the Secretary’s decision to refuse to grant the class 4 venue licence to the Appellant.

### **The *de novo* nature of an appeal under section 77**

- 41. The Commission’s powers on appeal make no reference to a “cause of action”. The Appellant’s primary submission is that the right to provide new information to which the Commission must have regard in determining the appeal is established expressly by section 77(3)(d) and has been confirmed by a number of earlier Commission decisions.
- 42. The Commission has previously set out its views about the nature of a class 4 appeal to the Commission, and the consideration of new information, which was not before the Secretary, as follows:<sup>27</sup>

When exercising its appeal functions, the Act provides that the Commission may request information from the parties under section 77(3)(a) and must consider any information provided by the parties under section 77(3)(d). This additional information may include evidence that was not considered by the Secretary when he exercised his decision-making powers. The Commission must consider this information.

and:<sup>28</sup>

As the Commission adopts a *de novo* approach to appeals, the Commission is entitled to exercise the discretion afresh, having regard to the material before it, and is not restricted to finding that the Secretary’s exercise was “wrong”.

and:<sup>29</sup>

On appeal, the Commission may seek new information and must consider any new information received. Its jurisdiction extends to making a new *de novo* merits assessment of the application.

- 43. The reference in *The Trillian Trust* decision to “discretion” was not an apt one; the Secretary at first instance and the Commission on appeal, make an assessment against statutory grounds, rather than exercise a discretion. Notwithstanding that, to date, the

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<sup>25</sup> Section 67(1)(c) and (d).

<sup>26</sup> Section 67(1)(r).

<sup>27</sup> *The Lion Foundation*, GC06/06.

<sup>28</sup> *The Trillian Trust*, GC20/12.

<sup>29</sup> *New Zealand Racing Board - TAB Newtown*, GC 24/19, at para 5.2.

Commission's settled approach to appeals regarding class 4 venue licences is to consider and determine the application afresh, as though it were the decision maker in the first instance, on the basis of all material then before it.<sup>30</sup> Its *de novo* approach to class 4 appeals has been endorsed indirectly by the Court of Appeal.<sup>31</sup>

44. The Commission's prior decisions include several instances of Commission appeal decisions which have been determined principally on the basis of new information provided by the appellant after the appeal had been lodged. Two of those decisions concerned the specific grounds relied upon by the Secretary in refusing the application in this case, as follows:

(a) *Appeal by The Southern Trust Inc/Te Wheke Holdings Limited*<sup>32</sup>

The appellant applied for a class 4 venue licence, accompanied by an affidavit to the effect that an application for an alcohol licence had been made, that it was awaiting a hearing and that, in the meantime, the venue would not operate gaming machines as its primary activity. After the application was returned as incomplete, an appeal was lodged on the basis that the return constituted a refusal to grant the class 4 venue licence. An alcohol licence was issued a month after the appeal was filed and prior to its consideration by the Commission. The Commission held that the return of the application was in error because the application was not incomplete without an alcohol licence, so should be considered a refusal decision with a right of appeal. On the basis of the later issue of an alcohol licence, the Commission was satisfied that the venue would not be primarily used for operating gaming machines and reversed the Secretary's decision to refuse. Importantly, it held that the receipt of the licence after the application's return and the lodging of an appeal did not trigger an obligation under section 98 to obtain territorial authority consent because the application had been made within 6 months of the prior surrender. It also indicated that the information originally provided might have been sufficient to meet the statutory test regarding primary use, with the addition of a condition requiring a current alcohol licence for the operation of class 4 gambling.

(b) *Appeal by New Zealand Racing Board - TAB Mangere Bridge*<sup>33</sup>

The circumstances of this appeal against a refusal to grant a class 4 venue licence were highly unusual, especially as it concerns timing. It related to an application which was time-limited by virtue of an unexpected Court of Appeal

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<sup>30</sup> Gambling Commission Practice Notes, Note 22.

<sup>31</sup> *Secretary for Internal Affairs v Pub Charity* [2013] NZCA 627 at [70].

<sup>32</sup> *The Southern Trust Inc/Te Wheke Holdings Limited* Decision GC17/07.

<sup>33</sup> *Appeal by New Zealand Racing Board- TAB Mangere Bridge* Decision GC05/17.

decision released in advance of a statutory amendment which assumed a *status quo ante* which differed fundamentally from the position set out by the Court of Appeal. The appeal was a second appeal, following a successful appeal which resulted in the Secretary, who had made the original refusal decision in anticipation of legislation which had not yet come into force, being directed to reconsider the application on the basis of the information held prior to the commencement of the amendment. On reconsideration, the Secretary refused the application for different reasons, which included lack of suitability of a key person. On appeal, the appellant put forward a new venue manager and had addressed the other issues raised. Satisfaction of the original issues by new information was “largely conceded”.<sup>34</sup> The Commission held that, in order to ensure that the appellant benefited from the successful first appeal, section 77(3)(d) should be applied. It also held that the unusual circumstances arising had not been contemplated by Parliament either in section 77 or in the 2015 amendment which had created the time-limited opportunity. Nothing in the decision indicates that section 98 was raised or considered.

45. The latter point is important because the Secretary raised a new consideration which was not addressed in the earlier Commission decisions, namely observations in the decision, *Feed Families Not Pokies Aotearoa Inc v Secretary for Internal Affairs*,<sup>35</sup> given by the High Court on 19 February 2024.
46. That proceeding was brought under the Declaratory Judgments Act 1908 and sought declarations regarding the relocation of class 4 venues following an earlier decision of the High Court, *ILT Foundation v Secretary for Internal Affairs (Waikivi)*<sup>36</sup> (which had held that a new venue licence was not required for a “minor change in location”) and the subsequent Gambling (Gambling Harm Reduction) Amendment Act 2013. The Court considered the introduction, by the 2013 amendment, of a new section 97A (on the effect of relocations) and the consequent amendment of 98(c) before making a declaration that “*Waikivi*” applications are not available under the Act, as amended in 2013. The essential reasoning was that the “thrust of the 2013 amendment was to place the locus of decision-making about relocation of licensed venues with each territorial authority”,<sup>37</sup> such that any movement, no matter how minor, required local authority consent by reference to its relocation policy. What was described as “the *Waikivi* workaround” was said to undermine the Act’s statutory purpose in section 3(h) (to facilitate community involvement

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<sup>34</sup> GC 05/17, at para 7.

<sup>35</sup> *Feed Families Not Pokies Aotearoa Inc v Secretary for Internal Affairs* [2024] NZHC 217.

<sup>36</sup> *ILT Foundation v Secretary for Internal Affairs (Waikivi)* [2013] NZHC 1330.

<sup>37</sup> At [2] and [33].

in the decisions about the provision of gambling) and the repeated reference to it in the 2013 amendment.

47. The reference in the FFNPA decision to section 3(h), in the course of considering the effect of amending section 98(c) and rejecting what were described as “textual arguments” about the difference between “venue”, “location” and “place” in support of a different conclusion restricting the role of territorial authorities, is unsurprising. The Commission itself has previously acknowledged the relevance of section 3(h) in construing and applying section 98. On the requirement to obtain territorial authority consent under section 98 and its relationship to the statutory purpose of the Act, the Commission has observed the following:<sup>38</sup>

(h) The requirement for territorial authority consent is governed by section 98. It governs the exercise of the Secretary’s licencing powers as expressly provided for in the licencing provisions, such as section 67(1)(f), which requires the Secretary to be satisfied that the territorial authority has provided a consent (if required under section 98).

(i) Regard to the statutory purpose is appropriate when construing the provisions of the Gambling Act. The Act provides a single purpose comprising 8 elements. While ensuring that money from gambling benefits the community is one element, so is facilitating community involvement in decisions about the provision of gambling. The requirement for territorial authority consent is one of the few provisions in the Act which provide for community involvement in decisions about the provision of class gambling. That element of the statutory purpose does not support reading section 98 restrictively.

48. However, the reference to section 3(h) in a decision construing sections 97A and 98 does not establish a more general proposition that all provisions in the Act, regardless of their subject matter, are to be read by the implied addition of words like “unless its application would adversely affect, directly or indirectly, community involvement in decisions about the provisions of gambling”. In this appeal, the Secretary’s argument is directed at the potential indirect effect of the operation of section 77(3)(d) on local authority control in the present case (although, in doing so, it impliedly accepts the express restrictions on the control of local authorities, in favour of historical positions, imposed by section 98).
49. For that reason, the Commission has concluded that it must apply section 77(3)(d) as it provides, without the application of a gloss which would restrict its operation in circumstances where it might indirectly affect the application of section 98, which appears to be the substance of the Secretary’s argument for declining to apply section 77(3)(d). It is one thing to prefer a construction which best aligns with section 3(h) and quite another to treat section 3(h) as impliedly limiting clear statutory obligations regarding the exercise of the Commission’s powers on appeal because of a possible indirect consequence of doing so in a particular case. The Commission has concluded that it is required to consider all information which the parties have provided for the appeal, including

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<sup>38</sup> *Appeal by Pub Charity/ Matata Hotel GC03/21* at para 10.22(h) and (i).

information provided after the original decision was issued and to assess the application in the light of that information.

### **Whether the appeal is an abuse of process**

50. The Commission has previously recognised the potential for appeal rights to be used to obtain an improper benefit and has struck out an earlier appeal as an abuse of process.
51. In its decision re *Infinity Foundation*,<sup>39</sup> the Commission granted a pre-hearing application by the Secretary to strike out an appeal by Infinity Foundation Ltd against the Secretary's decision to cancel the class 4 venue licence that had been issued to Infinity for "The Bar 4 Us" venue in Hastings. The Secretary had cancelled the licence because the venue's key person was no longer suitable. The Secretary's grounds for cancelling the licence were not disputed or challenged, but the appellant relied on new material to satisfy the statutory requirements, namely that an agreement for sale of the venue to a new key person had been entered into; settlement could occur upon confirmation of a new venue licence; the previous unsuitable key person would no longer be involved in the business; and the relevant gaming machines at the venue would remain turned off until a new licence was issued. The Commission held that the Notice of Appeal had been filed merely to afford the appellant sufficient time to sell the business to a third party, and that this was an inappropriate use of the appeal process. The Commission stated:<sup>40</sup>

Section 78(2) of the Act effectively provides that a class 4 venue licence remains in force if an appeal is filed, pending the outcome of that appeal. Such a provision can lend itself to abuse if unmeritorious appeals are filed simply to delay the effect of the Secretary's decision. The totality of the material before the Commission indicates that the sole purpose of lodging the appeal was to obtain the benefit of this automatic stay to facilitate the sale of the business to a third party. The Commission does not consider this to be a legitimate use of the appeal process and accordingly strikes the appeal out as constituting an abuse of process.

52. Although that decision was the result of a pre-hearing strike-out application, the Commission does not consider that abuse of process can only be raised by such an application. The issue may also be raised in substantive argument on appeal and the Commission may confirm the Secretary's decision if it conclude that the appeal is an abuse.
53. The Commission notes that, unlike the present appeal, the *Infinity Foundation* appeal related to an existing licence, so it created an automatic statutory stay preserving the operation of the cancelled licence, and the oblique purpose was admitted. It also notes that there is nothing to indicate that either section 77 or section 98 was raised or considered in the decision. In *New Zealand Community Trust/Flannaghan's Irish Pub*,<sup>41</sup>

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<sup>39</sup> *Pre-hearing application by the Secretary for Internal Affairs to Strike out the Appeal by Infinity Foundation Ltd re "The Bar 4 Us"*. GC07/07.

<sup>40</sup> At para 13.

<sup>41</sup> GC 04/21, para 6.7 and fn 2, noting that.

the Commission expressed some reservations about striking out, as abuses of process, appeals which relied on new information about changes after the Secretary's decision, pointing out that section 77(3)(d) had not been considered in *Infinity Foundation*. The abuse of process issue had been raised only in the course of a secondary argument and the Commission declined to determine the issue, preferring to leave it to an appeal in which it would be a central issue.

54. A view that it would be an abuse of process to provide new information on an appeal to address the concerns raised by the Secretary may be difficult to reconcile with the approach taken previously by the Commission in a number of its earlier decisions, such as the *Te Wheke Holdings*, and *New Zealand Racing Board - TAB Mangere Bridge* decisions.<sup>42</sup> However, a possible point of distinction from those decisions may be that the new matters in those cases were complete and in place and not merely prospective - the alcohol licence had been issued, the financial position had altered and the new manager was already employed and working at the venue. In that regard, the present appeal may be more similar to *Infinity Foundation*, where the information concerned a prospective state of affairs, contingent on a successful appeal.
55. The Commission did not decide the appeal on the basis of whether appeals relying on new information are abuses of process but proceeded with a substantive assessment, under section 67(1), of the remaining issues to see whether that would be determinative of the outcome. It did so on the basis that if, on the material before it, it was not satisfied about any of the matters of concern to the Secretary the result of that assessment would be determinative, irrespective of the above issues.

**Satisfaction about the main use not being to operate gaming machines (and, relatedly, in the event of a condition, ability to comply with section 71(1)(g))**

56. Under section 67(1)(k) and (s), the Commission must be satisfied that the Venue, if licensed, would not be used mainly for operating gaming machines and that the Appellant is able to comply with all applicable regulatory requirements. The proposed main activity of the Venue is listed in the Application as a 'tavern'. Section 5(1) of the Sale and Supply of Alcohol Act 2012 defines 'tavern' as premises used or intended to be used in the course of business principally for providing alcohol and other refreshments to the public. It requires a tavern alcohol licence to do so lawfully.
57. The most obvious distinction between the *Te Wheke Holdings* decision and the present appeal is that, in the former, an alcohol licence had been obtained prior to the Commission's consideration of the appeal but, in the present appeal, only an application has been made; the application is yet to be decided and has been opposed. The primary

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<sup>42</sup> See also *Brunner Rugby League Club*, GC 08/11 and *Waitara Town & Country Club*, GC 21/20, which considered updated financial information and the engagement of a new manager.

use set out in the application is use as a tavern but the Venue cannot operate as a tavern without an alcohol licence.

58. The Appellant proposed to provide the requisite satisfaction concerning main use by the imposition of a condition, coupled with speculation about the potential for various subsequent delays which may avoid the Appellant being obliged to surrender the licence 4 weeks after its issue because no class 4 gambling had been conducted for 4 weeks. The Commission has previously raised imposing a condition as a possibility (without having decided any appeal on that basis). The Appellant did not put forward a suitable interim condition for consideration by the Commission or the Secretary.
59. The Commission's assessment is adversely affected by the contingent nature of the new circumstances on which reliance is now placed. The Appellant originally asked the Secretary to delay his decision because of a pending DLC hearing. When the DLC decision was unfavourable, DCT asked for the application to be put on hold. After the application was refused, the Appellant took steps to change the proposed venue operator and venue manager but those arrangements are not yet in place (and the Venue remains closed) because they are contingent on the outcome of a contested alcohol licence application. The Secretary rightly observed that the refusals by the DLC and the Secretary of the earlier applications, in the light of the compliance record of Mr Zhu, should arguably have been anticipated by the Appellant. Instead, it appears that the Appellant ran the risk of an unfavourable outcome of the application, in which Mr Zhu would clearly be a key person, and then endeavoured to buy time when Mr Zhu's connection to the Venue resulted in the application being refused.
60. At no stage has any other potential interim primary use (that is, a primary use not reliant on an alcohol licence) been proposed.
61. The Commission is not satisfied that the main use ground, under section 67(1)(k), has been adequately addressed, including by the suggested imposition of a condition prohibiting gambling (the very activity which a class 4 licence permits) until an alcohol licence is issued. It declines to impose such a condition and is not satisfied of the "main use" ground on the information before it.
62. In addition, uncertainty about the timing and outcome of the current application before the DLC leads to doubts about the ability of the Appellant to comply with regulatory obligations,<sup>43</sup> especially the obligation to conduct class 4 gambling within a 4 week period under section 71(1)(g). Compliance with that obligation is highly uncertain, relying on various possible delays in the issue of a class 4 licence and the eventual grant of the alcohol licence before time runs out.

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<sup>43</sup> See section 67(1)(s).

63. In the circumstances, the Commission is not satisfied about the ground relating to the main use of the Venue nor of the ability of the Appellant to comply with its regulatory obligations. That assessment determines the appeal.

#### **Other grounds**

64. Under section 67(1)(c) and (d), the Commission must be satisfied that it has no cause not be satisfied about the suitability of the proposed venue manager and of any other key person. Key person relevantly includes the venue operator and venue manager and any person who has the ability, directly or indirectly, to exert a significant degree of influence over the management or operations of the venue operator.
65. The Commission can only identify and assess all key persons on the basis of evidence presented to it. On this occasion, that has been constrained by the failure of the Secretary to respond to the material presented by the Appellant, instead reserving his position on the merits of the amended application.
66. That course does not provide the Commission with the contribution which it expects from the Secretary on appeals to ensure that the Commission is able to make informed decisions on all matters before it and efficiently process appeals made to it. In some cases, it can lead to avoidable delays in achieving finality of the application because the lack of information can result in the Commission referring the application back to the Secretary for further investigation and consideration. That is often highly undesirable, especially in respect of appeals regarding new applications, which are not the subject of a statutory stay, and which may be subject to time pressures under sections 92 or 98. In the *Te Wheke Holdings* decision,<sup>44</sup> the Commission considered whether to refer the application back to the Secretary (in the light of possible residual suitability concerns), but declined to do so because the appellant did not have the benefit of a stay. Instead, it reversed the Secretary's decision, directing the issue of a class 4 venue licence, noting that the Secretary had ongoing powers to suspend or cancel licences if the grounds for grant are no longer met. As matters have transpired, that concern does not require determination on this appeal because the Commission has concluded that it is not satisfied on the main purpose ground. However, the Commission considers it appropriate to comment adversely on the practice of the Secretary electing to present only limited argument and failing to address all of the issues arising.
67. Under section 67(1)(r), the Commission must also be satisfied that there is no other factor that is likely to detract from achieving the purpose of the Act. The Secretary raised that section and section 3(h), regarding the facilitation of community involvement in gambling

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<sup>44</sup> GC17/07, paras 32 to 34.

decisions, despite reserving his position on the merits of the application in the event that the Commission decided to consider post-decision information.

68. The statutory ground is a “catch-all” which requires consideration whether there is any other factor which indicates that the grant of the licence would detract from the purpose of the Act. The Act has a single, composite purpose which includes facilitation of community involvement in gambling decisions under section 3(h). The Appellant points out that the latter is only one component of the purpose.
69. The only purpose matter raised by the Secretary is that the application of the Commission’s statutory appeal powers might enable the application made in August 2023 to be granted on appeal rather than requiring a new application which would require section 98 consent from Auckland Council.
70. That consideration adds nothing to the earlier submission arguing that the Commission should decline to consider the new material, despite section 77(3)(d). The fact that, on appeal, the application has been considered in the light of the later received material is the only matter which is said to detract from the purpose of the Act. The Commission doubts that section 67(1)(r) requires the Commission to treat other provisions of the Act as detracting from its purpose. By logical extension, the argument would ultimately require the express limits on the local authority veto imposed by sections 92 and 98 to be ignored.

### **Decision**

71. For the foregoing reasons, pursuant to section 77(4)(a), the Commission confirms the decision of the Secretary to refuse to grant the application for a class 4 venue licence to the Appellant in respect of the Venue.



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Susan Hughes KC  
Gambling Commissioner

for and on behalf of the  
Gambling Commission

24 July 2024

