

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

**AND** on an appeal by **YOUTHTOWN INCORPORATED** in respect of premises known as Kina's Sports Bar

**BEFORE THE GAMBLING COMMISSION**

Members: L M Hansen (Chief Gambling Commissioner)  
D C Matahaere-Atariki  
W N Harvey  
S C L Pearson

Date of Appeal: 31 January 2020

Date of Decision: 17 April 2020

Date of Notification  
of Decision:  April 2020

**DECISION ON AN APPEAL BY YOUTHTOWN INCORPORATED  
RE KINA'S SPORTS BAR**

**Introduction**

1. Youthtown Incorporated ("**Youthtown**") has appealed against a decision by the Secretary for Internal Affairs ("**Secretary**") to issue a class 4 venue licence for Kina's Sports Bar at 42 Mannering Street, Tokoroa ("**premises**") with a condition that no more than nine gaming machines may be operated. It says that the licence should allow it to operate 16 gaming machines, pursuant to the "grandparenting" provision in section 92 of the Gambling Act 2003 ("**Act**"). The class 4 venue licence application was filed on 27 May 2019 and granted on 31 January 2020.
2. The appeal raises two key issues for determination by the Gambling Commission:
  - (a) Whether the previous class 4 licence holder for the premises, Pockets 8 Ball Club ("**Pockets 8 Ball**"), surrendered its class 4 licence on 10 December 2018, as the Secretary submits, or 5 December 2019, as Youthtown submits. If Youthtown is correct, a period of more than six months in which no class 4 venue licence was held for the premises had not expired by the date on which the issued licence commenced and Youthtown would have been entitled to a licence to operate 16 machines under section 92.

- (b) If the Secretary is correct (so more than six months had passed since Pockets 8 Ball had surrendered its licence), whether the Commission considers that the licence should be backdated so to commence within six months from 5 December 2018, preserving continuity under section 92 so that it can permit the operation of 16 machines.

### Background

3. The facts were largely agreed and not in dispute. What is in issue is the proper interpretation and effect of an 8 November 2018 email sent on behalf of Pockets 8 Ball and an associated media statement, and of emails sent by Lisa Vuong of the Department of Internal Affairs ("DIA") on 29 April 2019 and 29 May 2019.
4. Pockets 8 Ball previously operated the premises as a billiards club. It held a class 4 venue licence entitling it to operate 16 gaming machines. On 29 June 2018, it applied to renew the venue licence. It was subsequently involved in a club merger application which was later abandoned.
5. On 8 November 2018, Jarrod True, on behalf of Pockets 8 Ball, sent the following email to the Secretary:

Pockets has elected to wind up and close on 10 December 2018. The club merger application will not proceed. Please call when free to discuss. A media statement will be issued today.

6. The media statement, also emailed to the Secretary, stated, inter alia:

Pockets 8 Ball Club has elected to withdraw from the proposed club merger and wind up. Staff were told this evening that the club will close on 10 December 2018.

The wind up will result in the closure of Pockets 8 Ball Club...

...

The venues that host the gaming machines have been placed on the market. The premises are likely to be purchased and turned into commercial pubs. If the purchase is made before June 2019, the gaming machine licences will be able to be restored as of right. The closure of the club is therefore unlikely to result in a reduction of the number of gaming machines in Tokoroa.

7. Pockets 8 Ball ceased trading on 10 December 2018 and was placed into liquidation the following day. The liquidator confirmed by email on 20 December 2018 that Pockets 8 Ball "had ceased trading shortly prior to the Liquidator's appointment and no trading activity has been undertaken since". He also advised that he could not complete the Cessation Form under section 111(1A) of the Act because he was "not in a position to verify the turnover and expenses off-set against turnover from gambling" for the Club.

There was no response to an email dated 22 January 2019 from the Secretary asking the liquidator to complete a cessation form.

8. On 15 January 2019, the liquidator agreed to sell the premises to J & I Imports Limited, the new venue operator. John McKeany (the sole director and shareholder of J & I Imports Limited) deposed that he immediately engaged specialist lawyers and consultants to obtain a liquor licence for the premises as soon as possible. An application for a liquor licence was lodged on 24 January 2019 and was publicly notified shortly thereafter. A formal objection was lodged to the liquor licence by Colin Bridle, an anti-gambling campaigner in Tokoroa. Mr McKeany considers that Mr Bridle's application was frivolous and intended to delay the issue of a class 4 venue licence for the premises.
9. Mr McKeany said that, before incurring the expense of a liquor licence application, he had Youthtown obtain the Secretary's written confirmation that any delay with the liquor licence application would not prevent a licence being issued allowing 16 gaming machines to be operated. In an email dated 23 April 2019, Mr McIntyre (Northern Territory Manager for Youthtown) sent the following email to Lisa Vuong, Senior Gambling Regulator:

Afternoon Lisa

I am going to process new licence application.

This site ceased operating on 19<sup>th</sup> December 2018.

The venue is licenced to operate 16 gaming machines.

The new operator has applied for his liquor licence this is expected in middle of May.

Can please confirm that if an application is received by the department prior to June 19<sup>th</sup> 2019 (six month period) that this allow the operator 16 machines.

If the licencing period extends beyond the six months and the application has been received by the department before 19<sup>th</sup> June. Will this still allow the operator to maintain the 16 machines at the same venue.

Can please also confirm that once application has been received that the clock stops on the six months non operation, or will we have apply for an extension.

[sic]

10. Ms Vuong responded on 29 April 2019:

Good morning Brad,

Thank you for your email.

I have answered your question below in red. As there was no venue name specified, I have not been able to confirm how many machines the venue can operate at the site.

... If a complete application is received within the 6 month timeframe, the Department will assess this and if approved, the operator can operate the number of machines the site was authorised to operate prior to ceasing their gaming.

... If a complete application is received before 19<sup>th</sup> June and is assessed and approved, the operator will be able to operate the number of machines the site was authorised to operate prior to ceasing their gaming.

... When a complete application is received prior to the six month period of non-operation the clock stops. However the application is still subject to assessment by the Department. An extension application is not required as the previous licence should have been ceased/surrendered.

11. Mr McKeany said that he took the email as written confirmation that the venue licence would be backdated if it were approved, although neither email referred to backdating and the DIA email, like the media statement, suggested that the mere filing of an application would stop time running. A belief that backdating would be required would have involved a level of knowledge not apparent from any of the communications referred to above. In reliance on the confirmation received, J & I Imports Limited proceeded with, and incurred expenses in relation to, the liquor licence hearing.
12. Sarah McKenzie, the decision-maker under the Secretary's delegated authority, deposed that Ms Vuong's advice was only information given in the abstract, because Mr McIntyre had not advised to which premises the application would relate. She admitted, however, that Ms Vuong confirmed that, if a completed application was received within six months, the operator could continue to operate the same number of machines as prior to cessation, albeit that this would ultimately be subject to the DIA's assessment and approval of the application.
13. Ms McKenzie said that, on 9 May 2019, DIA was contacted by Mr McIntyre, who forwarded questions from the local District Licencing Committee ("**DLC**"). Ms McKenzie pointed out that, in the Secretary's reply to the DLC the following day, in response to a question whether DIA would approve the number of gaming machines in the venue, Ms Vuong stated: "[t]he Department cannot comment as we have not received an application for a venue licence at 42 Mannering Street, Tokoroa at this time".
14. On 2 May 2019, the liquor licence hearing was held before the South Waikato DLC. On 23 May 2019, the DLC granted a liquor licence for the premises.
15. On 27 May 2019, Youthtown lodged a class 4 venue licence application. The application was not returned as incomplete. It did not include a liquor licence, as it had not yet been issued, and annexed unsigned versions of the lease and floor plan.

16. Mr McIntyre sent an email to Ms Vuong on 28 May 2019 advising her that the licence had been granted but would not be issued until after the expiry of the 10 day appeal period. He went on to say:

As discussed kina;s Sports Bar has been granted a liquor [licence] but can not be issued as has 10 days to appeal.

This means it could be granted on 7<sup>th</sup> June signed copy of lease would be completed on issue of this licence on the same date.

I hoping to get this information to you on this date but being a Friday and council it may take a couple of days.

As I have sent the rest of application on the 27<sup>th</sup> of May does this stop the clock on the six month time frame as it will be getting very close

To this date

As the operator wants to operate the 16 machines that Youthtown has applied for in the GC3 Application can you please clarify this for me

[sic]

17. Mr McIntyre said that his email was intended to obtain confirmation that the premises would be able to operate 16 gaming machines. Ms Vuong responded the following day

Morning Brad,

...

As the application was lodged on 27/5/19, the 6 month timeframe has stopped however I would advise that the outstanding documents get sent through to us as soon as they are received.

18. On 14 June 2019, in an internal email to Rochell Brown, a senior gambling regulator, Ms Vuong said:

During assessment of the application, if I can be satisfied that s65(2)(j) has been met that I will backdate the licence to 28/5/19 which is when they lodged the application and within the 6 month timeframe. If I cannot be satisfied of s65(2)(j) I will propose to refuse to issue the licence.

19. Ms Vuong followed up on the outstanding information on 3 July 2019, and again on 13 August 2019, but did not receive a substantive response to either.
20. On 6 June 2019, Mr Bridle lodged an appeal against the DLC decision to grant a liquor licence. On 1 November 2019, the Alcohol Regulatory and Licencing Authority (“ARLA”) dismissed the appeal, describing it as “without merit”.<sup>1</sup>
21. On 3 December 2019, Ms Vuong sent the following email to Youthtown:

<sup>1</sup> *Bridle v J & I Imports Ltd* [2019] NZARLA 215 at [137].

Previously I indicated that the venue would be able to operate up to 16 gaming machines as the clock for the clock for the 6 months due to receiving the GC3.

The clock does stop in this instance in terms of section 98(b) which would require Territorial Authority Consent if a venue were unlicensed for 6 months. However the Gambling commission has previously ruled that an application does not stop the clock in terms of Section 92 which would allow a venue licenced before 17 October 2001 to operate up to 18 gaming machines but only if there has not been a period of 6 months or more when no class 4 venue licence was held.

This means that section 94 would apply which allows the operation of up to 9 gaming machines.

To be consistent with other decisions we are only able to issue a venue licence allowing the operation of up to 9 machines at Kina's Sport's Bar.

[sic]

22. On 5 December 2019, the liquidator of Pockets 8 Ball sent a letter to the Secretary, saying "Pockets 8 Ball Incorporated (In Liquidation) unconditionally surrenders its venue licence for 42 Mannering Street Tokoroa effective 5 December 2019".
23. On 9 December 2019, the signed floor plans, deed of licence and Alcohol Regulatory and Licencing Authority decision were provided to the Secretary.
24. On 10 December 2019, Ms Stanley, on behalf of the Secretary, requested the liquor licence from Youthtown, advising that a venue licence could not be issued without that document and a venue inspection. The liquor licence was forwarded to the Secretary on 11 December 2019. The venue inspection took place on 19 December 2019, with concerns arising from that resolved by 22 January 2020.
25. The venue licence was issued on 31 January 2020, commencing on that date, and capping the maximum number of gaming machines at nine.
26. No reasons were given by the Secretary for the number of gaming machines or the decision not to backdate the licence. However, Ms McKenzie deposed that the reasons were as follows:
  - (a) As the Secretary considered that the prior licence was surrendered on 10 December 2018, the six-month period under section 92 had expired.
  - (b) The delay in granting the licence within the section 92 period was not caused by the Secretary or DIA, which dealt with it in a timely manner. The application was lodged only approximately two weeks before the six month period ended. Even then, there were outstanding documents and changes required to grant the application including:
    - (i) the liquor licence, which was provided on 11 December 2019,

- (ii) the signed floor plan, signed deed of lease and liquor licence decision, which was provided on 10 December 2019, and
  - (iii) changes were required to the venue so that the bar staff could see the entrance to gaming area, which was resolved on 20 January 2020.
- (c) The Secretary considered that it was essential that a liquor licence be issued as a prerequisite because of a requirement to be satisfied under section 67(1)(k) that the venue will not be used mainly to conduct gambling, and, in most cases, a liquor licence provides proof. A mere assertion that the venue would operate as a tavern once the alcohol licence was granted is insufficient. The Secretary can also only be satisfied that a condition under section 70(1)(i) will be complied with once all appeals against an alcohol licencing decision are disposed of. The Act requires that the venue operator is the occupier of the premises, so the Secretary can only be certain that there is a right to occupy the premises if the lease is unconditional (and most venue licences are conditional on liquor licences being granted).
- (d) There was very limited continuity. The only element of continuity was the venue location. It had been operated as a billiard club. It is now being operated as a tavern. There was no continuity of the people involved in the operation.
- (e) There was also an additional consideration that Tokoroa was a high deprivation area, and therefore some sensitivity should be exercised in relation to the number of machines authorised under the licence.

27. Ms McKenzie also deposed that the Secretary's decision was consistent with other applications in similar situations, including the Secretary's decision on an application by the Grassroots Trust relating to Lucky's Barcade and Social. That decision was recently considered by the Commission on appeal.

### **Relevant legislation**

#### *Surrender provisions*

28. Section 67(1)(e) provides:

#### **67 Grounds for granting class 4 venue licence**

- (1) The Secretary must refuse to grant a class 4 licence unless the Secretary is satisfied that—

- (e) if the application relates to a class 4 venue that is licensed to another corporate society, the other corporate society has surrendered its class 4 venue licence for the venue[.]

29. Section 71 sets out requirements to notify the Secretary of changes in relation to a class 4 licence the conditions, including notification of circumstances which are described (in parenthesis) as requiring a surrender of licence to the Secretary. The relevant portions of the provision are:

**71 Significant changes in relation to class 4 venue licence must be notified**

- (1) A corporate society holding a class 4 venue licence must notify the Secretary, and provide details, if any of the following things occur:
  - ...
  - (g) the corporate society has not conducted class 4 gambling at the venue for a period of more than 4 weeks (in which case the class 4 venue licence must be surrendered, under section 79(1)(a), unless the Secretary agrees that the venue may remain inactive for a further specified period).

30. Section 79 itself sets out the obligation to surrender:

**79 Surrender of class 4 venue licence**

- (1) A corporate society—
  - (a) must surrender a class 4 venue licence to the Secretary in the circumstances described in section 71(1)(g);
  - (b) may surrender a class 4 venue licence to the Secretary at any other time.
- (2) The surrender of a class 4 venue does not affect—
  - (a) the obligation of the corporate society to apply and distribute the net proceeds from the gambling in accordance with this Act and the licence; and
  - (b) any condition relating to records that must be maintained and reporting requirements.

*Backdating provisions*

31. The relevant provision which gives rise to the practice of backdating licences from their date of issue is section 92 of the Act:

**92 Limit on number of gaming machines for which class 4 venue licence held on 17 October 2001**

- (1) This section applies to a class 4 venue for which—
  - (a) a class 4 venue licence was held on 17 October 2001; and
  - (b) there has not been a period of 6 months or more since 17 October 2001 when no class 4 venue licence was held.

- (2) A corporate society must not operate more than 18 gaming machines at a class 4 venue.
- (3) The number of gaming machines notified to the Secretary under section 89(1), and the models and serial numbers of the gaming machines, must be treated as a condition of the class 4 venue licence and the corporate society must not change the gaming machines, or operate more than that number of gaming machines at the venue, unless—
  - (a) a new class 4 venue licence is obtained that allows the change; or
  - (b) the licence is amended to allow the change.
- (4) The limit in subsection (2) and the condition as to number imposed under subsection (3) may be overridden under section 95 or reduced by regulations made under section 314(1)(a).

32. In contrast, section 94 applies to venues to which section 92 does not apply and for which a class 4 licence is granted after the commencement of the section:

**94 Limit on number of gaming machines for venue with venue licence granted after commencement**

- (1) This section applies to a class 4 venue—
  - (a) to which section 92 does not apply; and
  - (b) for which a class 4 venue licence is granted after the commencement of this section.
- (2) A corporate society must not operate at a class 4 venue more than the greater of—
  - (a) 9 gaming machines; or
  - (b) the number of gaming machines approved by the Minister under section 96.
- (3) The limits in subsection (2) may be reduced by regulations made under section 314(1)(a).

**Youthtown's submissions**

33. On the surrender issue, Youthtown submitted, in summary, as follows:

- (a) Liquidation does not automatically end a venue licence, as liquidators may take over gaming venues and continue to trade.
- (b) *New Zealand Racing Board re TAB Newtown* (decision GC17/19) is authority for the proposition that sufficiently clear, unequivocal and final language is required for notification of a decision in order for an appeal right to arise.<sup>2</sup> In that case, the Secretary's advice, by telephone and email, that a decision had been made to refuse a venue licence did not constitute an appealable decision. By analogy, surrender of a venue licence requires formal

<sup>2</sup> *Appeal by New Zealand Racing Board* (decision GC17/19), 17 July 2019.

communication similar to what is required for a decision to be appealed to the Gambling Commission.

- (c) Before granting a new venue licence to another society, section 67(1)(e) requires the previous venue operator to submit a signed letter unconditionally surrendering the venue licence so that the Secretary may be satisfied of its surrender. In practice, the Secretary requires part G of the GC4A form to be completed and submitted as part of the standard surrender process.
- (d) Pockets 8 Ball's licence was in force under section 72(6) until it was surrendered in December 2019 as the renewal application was never refused by the Secretary. The six month period under section 92 was never exceeded as Youthtown was eventually granted a licence on 29 January 2020.

34. In respect of backdating, Youthtown submitted, in summary, as follows:

- (a) The Secretary must consider backdating in all cases where the six month period has passed.
- (b) The discretion to backdate should not be limited to delays caused by the Secretary's actions or a Gambling Commission appeal but should be exercised wherever appropriate.
- (c) The delays were beyond the control of Youthtown or the venue operator. They were caused by the liquor licencing process, clarification sought by the DLC from the Secretary, the time taken for the DLC and ARLA to deal with Mr Bridle's unmeritorious objections, and the South Waikato District Council's delay in issuing a licence. Youthtown referred to passages in the DLC and ARLA decisions critical of Mr Bridle's arguments and approach, as well as other material showing that Mr Bridle had a strategy designed to thwart the operation of class 4 venues.
- (d) The delay was also caused by the Secretary imposing a requirement for an issued liquor licence before granting a venue licence, despite the appellant providing other evidence regarding the primary activity.
- (e) On the Secretary's approach to surrender, the venue lacked a licence for nearly 13 months, which is less than the passage of time in *Air Rescue Services* (decision GC26/10).<sup>3</sup> In that case, the appellant was granted a

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<sup>3</sup> *Appeal by Air Rescue Services* (decision GC26/10), 5 October 2010.

backdated licence despite the venue having ceased trading for two years and two months.

- (f) Ms Vuong advice on 29 April 2019 created a substantive legitimate expectation that the Secretary would exercise a backdating discretion. In reliance on that expectation, Mr McIntyre expended significant efforts and cost to push forward the liquor licence application.
- (g) The Commission should direct the Secretary to issue a backdated venue licence commencing 8 June 2019, with an expiry date of 30 September 2020.

### Secretary's submissions

35. On the surrender issue, the Secretary submitted, in summary:

- (a) To grant a class 4 venue licence under section 67(1)(e) of the Act the Secretary must be *satisfied* that the previous corporate society has surrendered its licence. It is a matter within the Secretary's discretion to determine whether a surrender has been effected on the facts. The Secretary may be satisfied that a surrender has occurred by implication arising from the operator's conduct.
- (b) A venue licence cannot continue for a liquidated society, as this would be inconsistent with the Act. The Secretary cannot be expected to be automatically satisfied that a liquidator who replaces the key venue person(s) is a suitable person to hold a venue licence. It is also unreasonable to expect the Secretary to assess the liquidator's suitability to be a new key person in circumstances where the operator has stated business will cease. Further, section 80 is clear that a class 4 venue licence cannot be transferred to a liquidator and then sold to a new society.
- (c) Under section 63 of the Act, an operator's licence may be surrendered at any time. Proof of the previous licence holder's surrender is only required in a licence application when the venue remains licenced to the outgoing society.
- (d) Under section 71(1)(g) and (2), the licence must be surrendered if a class 4 venue licence is inactive for more than four weeks. The surrender may occur automatically once the four week inactivity period is exceeded. This is supported by correspondence from Mr Cairncross of the Commission, dated 24 August 2010, in *The Wheatsheaf*, which read:

If the Secretary both refuses to agree to the period of inactivity and proposes to suspend or cancel the licence following a notification under section 71(1)(g), as he has done in this case, unless the

notification/application for extension is treated as an application for amendment, the parties will be in the peculiar position of having begun a cancellation process (including its rights of appeal), when the licence has already been irrevocably surrendered.

- (e) There is no requirement under the Act which makes it a condition of an effective surrender that the licence holder must provide an unconditional surrender in writing by the venue licence holder or complete a particular form. As a matter of best practice, the Secretary prefers the GC4 form to be completed and accompanied by a signed, unconditional surrender in writing. However, this is not an invariable requirement as it may not always be practicable to obtain a completed form, especially if a society has been liquidated or if a society is unwilling or unable to complete paperwork.
- (f) The Secretary should be permitted a flexible discretion to accept various methods of surrender under the Act, as insistence on a rigid, formal process could produce delays and unnecessary complications. In the past, the Secretary has accepted emails sent by operators as constituting a valid surrender.
- (g) The email sent by Pockets 8 Ball on 8 November 2018 stated in clear, unambiguous terms that the venue would cease to operate on 10 December 2018. The venue was inactive between 10 December 2018 to 31 January 2020, and there was no correspondence between Pockets 8 Ball and DIA (save for a brief communication from the liquidator regarding cessation). The Secretary correctly determined that Pockets 8 Ball's venue licence had been surrendered on 10 December 2018, and not on 5 December 2019, as Youthtown claims.

36. On the backdating issue, the Secretary submitted as follows:

- (a) The application was submitted only two weeks before the six month period ended. The application could not be assessed without an issued liquor licence as proof of the venue's primary activity.
- (b) *Air Rescue Services Limited* GC26/10 suggests that the kinds of process delays which justify an exercise of a backdating discretion, other than a Gambling Commission appeal, all relate to the Secretary's conduct. This indicates that the Secretary's conduct is the main relevant factor in applicable delay.
- (c) The delays caused by the alcohol licensing process were inherent in the operation of the Act. Although the appellant argued that there was sufficient

information within the licence application to show that the venue would be operated as a tavern, until a valid alcohol licence was provided, the Secretary could not be certain that the primary activity was not gambling in accordance with section 67(1)(k) and section 70. In addition, the Secretary may only issue a venue licence to an operator where they can prove they are the legal occupier of the venue. In this case, the venue's lease agreement was conditional on the alcohol licence being granted.

- (d) The delay claimed by Youthtown should be distinguished from the process delay in the *Air Rescue* case. The length of the processes involved in obtaining a liquor licence is inherent in establishing a business of this nature and not outside of Youthtown's control. It would be incorrect to characterise the loss of a 16 gaming machine licence as an unjustified and casual deprivation of a statutory entitlement by the Secretary.
- (e) There is an absence of substantive continuity between the operation by Pockets 8 Ball of the venue and the premises. Pockets 8 Ball was a billiard club, whereas Kina's Sports Bar is a tavern. The sole element of continuity is the location.
- (f) The legislative intent behind the "grandfathering" provision in section 92 does not extend so as to apply to a new venture, which commenced trading nearly 20 years after the last 18 machine licence was granted.
- (g) The Commission should give limited weight to the claim that a substantive legitimate expectation existed. Ms Vuong did not have the full facts before her in order to exercise a meaningful discretion, and she intended her advice to address the six month period prescribed in section 98 (obtaining consent of territorial authority) rather than section 92 and, on an objective construction, the 29 April 2019 email can be interpreted as relating to section 98. To the extent that there was a legitimate expectation that the Secretary would consider backdating the licence, the Secretary did so. Legitimate expectation cannot be relied upon if doing so would be inconsistent with duties under the Act.
- (h) In deciding whether the Secretary was correct not to backdate the licence, the Commission should give additional consideration to Tokoroa's status as a high deprivation area, and the factually similar *Grassroots Trusts* (decision GC09/20).

### Reply submissions

37. In reply, Youthtown submits, in summary, in relation to the surrender issue:

- (a) A surrender cannot be reasonably implied from the 8 November 2018 email and its surrounding communications. The email only stated that the club merger application would not proceed: nowhere in the email did it mention 42 Mannering Street, the existing venue licence or "surrender". The media statement also did not refer to "surrender". On the contrary, the statement confirmed a belief by Pockets 8 Ball that the closure would not likely result in a reduction of the number of gaming machines. As a surrender cannot be subject of an appeal, a decision by the Secretary deeming a licence to be surrendered would arbitrarily deprive licence holders of their statutory appeal rights.
- (b) Mr True, who is counsel for Youthtown and was counsel for Pockets 8 Ball, says that the email that he wrote was not intended to surrender the licence, and surrender was not mentioned in the subsequent phone conversation referred to in the email. The intention of Pockets 8 Ball was to leave the gaming licences active until the four week inactivity period in section 71(1)(g) had lapsed, leaving the ultimate decision on surrender to the liquidator.
- (c) The liquidator's refusal to complete the cessation pack suggests that surrender did not occur.
- (d) A surrender on 10 December 2018 would have been premature as the four weeks inactivity period under section 71(1)(g) would have only required Pockets 8 Ball to surrender their licence from 7 January 2019. Further, as a matter of best practice, the Secretary should have advised the liquidator once the inactivity period had expired and invited him to surrender the licence or apply for an extension.
- (e) It is not open to the Secretary to circumvent the formal process outlined in section 75 for suspensions, cancellations and renewals of class 4 venue licences simply because of the occurrence of a liquidation. It would not have been difficult for the Secretary to issue a cancellation proposal on the grounds of a breach of section 71(1)(g) followed by a final decision cancelling the venue licence if a response had not been received after 20 days. Liquidation and receivership are in themselves valid grounds for the Secretary to commence the section 75 cancellation process.
- (f) The Act is silent whether a gaming licence is automatically cancelled upon liquidation or receivership. It is possible for a gaming licence to remain in

place and for a venue to continue to trade in liquidation. While section 80 precludes transfers of class 4 venue licences, the right to host gaming machines (which simply arises from a prior licence being in place) may be transferred along with the premises themselves as a right which attaches to the premises.

- (g) The Act could have provided expressly that a class 4 venue licence is automatically surrendered on the expiry of the four week inactivity period under section 71(1)(g). However, the wording of section 71 indicates that a society in breach of section 71(1)(g) must take active steps to surrender the licence under section 79(1)(a). That is mirrored in the latter provision. It was incumbent on Pockets 8 Ball's liquidator to surrender or apply for an extension in respect of the venue licence upon the expiry of the inactivity period.
- (h) Rather than assuming an implied surrender, the Secretary could have cancelled the venue licence, pursuant to section 74(1)(b), on the grounds that the society failed to comply with requirements of the Act (by breaching section 71(1)(g)).
- (i) The correspondence noted in *The Wheatsheaf* is not binding precedent. It is an excerpt from an email, not a decision of the Commission.

38. In relation to the backdating issue, Youthtown submitted, in reply, as follows:

- (a) The fact that the licence could not have been granted within six months is not fatal. It could have been granted, with an application made under section 71(1)(g) for approval of a period of inactivity pending resolution of the liquor licencing appeals.
- (b) The Secretary could have been satisfied that alcohol sales would be its primary activity by reference to the floorplan provided to the Secretary on 27 May 2019. The floorplan made it obvious that it would be used as a large tavern. The Secretary also received a DLC direction, requesting certain information, to which the Secretary responded on 10 May 2019, and was advised that the licence had been granted on 23 May 2019.
- (c) It is not a requirement under section 67(1)(k) that the Secretary must be satisfied about the particular form of entertainment offered at the venue, whether that be a tavern or restaurant. Rather, the Secretary is only required to be satisfied that the venue will be predominantly used for an activity other than gaming machines. Concerns that the venue could have conducted

gambling prior to the issue of a liquor licence are unjustified considering section 70(1)(i), which requires class 4 venue licences to include a condition prohibiting class 4 gambling at a venue unless the primary activity is offered and available. As such, a licence could have been issued earlier.

- (d) The operator and Youthtown acted timeously. Mr McKeany reached agreement to take over the premises from the liquidator and the liquor licence application was lodged within weeks of the venue closing.
- (e) Parliament did not provide that an 18 machine entitlement should be lost when the venue changed ownership or the primary activity changed. All that is required for continuity is that the venue be physically located in the same place. The situation is similar, and in many respects more favourable to the appellant, to the circumstances in *Air Rescue*, where a backdated application was granted.
- (f) Tokoroa's status as a high deprivation area is an irrelevant consideration regarding the Secretary's exercise of the backdating discretion. Even if broader policy considerations of the Act, such as harm minimisation and controlling gambling growth are relevant, these reasons do not necessarily justify a reduction of gaming machines in this instance.
- (g) It is clear that Ms Vuong's representation related to the 18 gaming machine entitlement rather than territorial authority consent. The 29 April 2019 email makes no reference to a territorial authority consent and My Vuong explicitly states that Mr McKeany would be able to operate the same number of machines, provided the licence application was received before 19 June 2019. The 3 December 2019 email, in which Ms Vuong backtracked from her original advice in the 29 April 2019 email, indicates that Ms Vuong also understood her initial representation to be about gaming machine entitlements.
- (h) Although legitimate expectation has no application if the decision making power leaves the Secretary without discretion, the Secretary had a discretion and backdating in the present circumstances would not have breached any statutory obligation.

## **Analysis**

### *Surrender*

39. The Commission has not previously considered the requirements for an effective surrender under section 79. The Act does not impose any formal requirements for a surrender of a class 4 venue licence.
40. Section 79 provides both an ability to surrender a class 4 venue licence voluntarily at any time and an obligation to surrender a class 4 venue licence, albeit that the detail of the latter is set out in section 71(1)(g) (namely, if the holder has not conducted class 4 gambling at the venue for more than 4 weeks unless the Secretary agrees to allow it to remain inactive for a longer period). As the section also provides that the surrender does not affect the obligation of a corporate society to apply or distribute the net proceeds from the gambling and any condition relating to its records, it follows that neither of those considerations affects whether a surrender has occurred.
41. Section 71 requires a corporate society to notify the Secretary of a number of different matters affecting the venue licence in force. They include liquidation (section 71(1)(b)) and the failure to conduct class 4 gambling at the venue for a period of more than four weeks (section 71(1)(g)). The latter makes provision for the Secretary to approve longer periods of activity which in turn affects the obligation to surrender the licence under section 79. Notification must be made before, or as soon as practicable after, those events.
42. Section 71 creates an obligation to notify the Secretary of certain circumstances, but the notification has no apparent effect on the continuation of the licence. Rather than providing for any automatic consequence, section 71(4) confirms that, following receipt of notice, the Secretary may require the society to apply for an amendment of its licence or invoke the suspension or cancellation provisions under section 74 and section 75.
43. Such a conclusion is consistent with what occurred in *Air Rescue Services*.<sup>4</sup> In that case, the prior venue licence holder failed to surrender the licence under section 79(1)(a) and, when the Secretary cancelled the licence, took a procedurally cynical appeal in order to preserve its continuation. The Commission held that the fact that “the Venue should have been without a licence for a much longer period” was relevant to the exercise of the backdating discretion. The comment illustrates that surrender did not occur automatically, from a mere lack of operation.
44. As a result, liquidation does not automatically terminate a venue licence. The suggestion on behalf of the Secretary that it does so and that no action was required by the Secretary to bring a licence to an end is unsupported by any statutory reference (or

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<sup>4</sup> *Appeal by Air Rescue Services Ltd* (decision GC26/10), 5 October 2010.

otherwise) as is the suggestion that surrender occurs automatically at the end of a period of four weeks inactivity without approval.

45. Liquidation similarly does not involve the transfer of a licence in breach of section 80, as suggested for the Secretary; the sole change upon liquidation is a change in the governance of the licence holder. While the Secretary is correct that a venue licence cannot be transferred with a sale of the premise, the premises may be sold with a history which preserves rights under section 92 on a new application.
46. The position in paragraph 44 is confirmed by the provisions of section 70(1)(b) and (5), 72(6) and 79. Their effect is that a venue licence continues in force until it expires (without a renewal application), is surrendered, is cancelled or is not renewed. Provisions for extension following expiry arise from a prior renewal application (section 72(6) and from appeals (section 78).
47. The grounds for suspension or cancellation under section 74 and section 75 include a past or continuing failure to comply with the prevailing regulatory requirements. Such failures include both the obligation to notify under section 71 and the requirement to surrender a licence under section 79. They also include one or more of the suitability requirements in section 67 no longer being met. Sections 74 and 75 thereby provide the means by which the Secretary can bring a licence to an end following the occurrence of a section 71 event.
48. The foregoing leads to the conclusion that the venue licence held by Pockets 8 Ball continued in force until it was surrendered (or expired). The Secretary did not undertake a cancellation process and it did not terminate automatically after 4 weeks of non-operation. The first issue therefore turns on whether Pockets 8 Ball surrendered the licence on either 10 December 2018 or 5 December 2019, which in turn depends on how the former should be construed.
49. As noted above, the Act specifies no particular process for surrender. Use of the form preferred by the Secretary as a matter of good practice is not required by anything in the Act. The Commission's decision in *New Zealand Racing Board re TAB Newtown* (GC17/19) is not of direct application (as suggested by the appellant). That decision was reached after consideration of both the express statutory requirements for a decision by the Secretary (from which appeal rights were conferred) and the broader common law principles of the requirements of an administrative or judicial decision. Neither apply to the surrender of a venue licence by a licence holder.

50. Notwithstanding that, some aspects of the *TAB Newtown* decision assist. As the act of surrender brings a licence to an end without statutory remedy (unlike cancellation or refusal to renew), the concept of surrender by implication does not sit easily within the statutory regime. There is good reason to require clear and unqualified communication of a decision to surrender the licence. In the Commission's view, the communication in question should be construed on its terms, and in the light of the immediately surrounding circumstances, in deciding whether it communicates sufficiently a decision by the licence holder to surrender the licence.
51. Clear and unqualified requires neither a particular form of communication (so an email would be sufficient) nor a particular form of words (so use of the word "surrender" is not strictly necessary). Anything in the communication which indicated that the advice was preliminary or provisional only and that it would be followed by a further confirmatory communication (as was the case with the earlier DIA communications in *TAB Newtown*) should be taken as an indication that it did not constitute a surrender. There was no such indication in this case.
52. The Commission is not prepared to place any weight on assertions of subjectively intended meaning by the author of the communications. Neither does it place much weight on more remote circumstances, such as the letter sent by the liquidator 12 months later or from speculative possibilities such as the liquidator electing to continue to operate the premises or seeking approval for a period of non-operation. If either of the latter had occurred, no issue of surrender would have arisen. The fact of the matter is that they did not happen and those possibilities were not raised in any communication.
53. The Commission did not consider that much assistance can be gained from sections 65 or 67. Section 65(2)(g) provides that an application for a class 4 venue licence, if the application relates to a venue that is licensed to another corporate society, must be accompanied by notice from the other corporate society that it is surrendering its venue licence for the venue. Similarly, section 67(1)(e) provides that a Secretary must refuse to grant a class 4 venue licence unless satisfied that the other corporate society has surrendered its class 4 venue licence for the venue. Both requirements would be satisfied by an effective surrender but neither imposes any additional requirements for a surrender. In this case, the Secretary considered that the venue licence was surrendered on 10 December 2018 and it is common ground that, if that were not so, it was surrendered on 5 December 2019.
54. It is important to be clear that the Commission does not concur with a submission for the Secretary that a decision under section 67(1)(e) whether a surrender had been

effected is a question of **discretionary** assessment on the Secretary's part. The section requires the Secretary to be "satisfied" that certain grounds are made out otherwise the licence application must be refused, including whether the venue is licensed to another party and, if so, whether that party has surrendered it. The requirement for the Secretary to be "satisfied" does not confer a **discretion** to decide whether a licence has been surrendered or not. Whether the requirements of section 67(1)(e) have been met must be determined as a matter of objective fact to the requisite standard ("satisfied"). If the Secretary refused a licence for failure to be satisfied of section 67(1)(e), the decision would be subject to appeal<sup>5</sup> and, if appealed, an assessment would be made by the Commission.

55. When the surrender took place is a question of fact to be determined by the Commission on appeal on the basis of an objective assessment of the communications in question and the surrounding circumstances. If the Commission considers that the 10 December 2018 communications by Pockets 8 Ball to the Secretary did not constitute a surrender, the position will be that the licence continued in force until the letter of 5 December 2019 (which all agree was an effective surrender, if the earlier communication was not).
56. Against that background, a majority of the Commission considered, on balance, that the communications fell just short of constituting a sufficiently clear and unequivocal surrender. All Commissioners agreed that mere advice of liquidation and cessation of the operation was insufficient. The majority considered that, while use of the word "surrender" was not necessarily required, the failure to mention the licence at all presented a difficulty. The words were insufficiently clear and unequivocal that the licence was being given up, not just the operation being closed. The position was not assisted by apparent errors on the part of all concerned about the licence's future. Because of the consequences of surrender, they were not prepared to conclude that the communications were sufficiently clear and unambiguous. They consider that uncertainty arising from such an approach should be addressed by the Secretary seeking clarification and, in its absence, taking steps to cancel the venue licence (if grounds exist).
57. A minority of the Commission concluded that, in the circumstances, there was sufficient clarity about the objective intent of the communication such as to indicate that both the former licence holder and the Secretary understood it to convey surrender. In that regard, the related media statement also sent to the Secretary indicated that the

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<sup>5</sup> See for example *Appeal by the Southern Trust Incorporated and Te Wheke Holdings Ltd* (decision GC17/07), 11 September 2007 at [19] to [23].

communication was intended to bring the licence to an end immediately. The comments relating to preservation of the number of machines if steps were taken by June 2019 (while mistaken about the legal effect) were consistent only with the licence ceasing on 10 December 2018, and not with any later decisions to be taken by the liquidator (including the December 2019 letter) or the expiry, or possibility of seeking an extension, of the inactivity period under section 71(1)(g). The subsequent communications from the Secretary and the liquidator's response were fully consistent with an intention to surrender (and the failure to provide the requested completed form was explained for reasons which did not include a lack of intention to surrender). The Secretary clearly proceeded, in the communications on which reliance was placed in seeking backdating, on the basis that the licence was surrendered in December 2018.

58. A majority of the Commission consider that surrender only occurred with the 5 December 2019 letter and, as a result, the applicant was entitled to rely on section 92 to preserve the right to 16 machines. The appeal can accordingly be determined in favour of the appellant by a majority decision on the first issue. However, as the Commission was unanimous on the second issue, it proceeded to address that issue as well. Doing so provides both an additional and unanimous basis for the outcome and some guidance for future applications.

#### *Backdating*

59. The principles relating to the backdating of class 4 venue licence applications were addressed in detail by the Commission in the *Air Rescue Services* decision.<sup>6</sup>
60. In *Air Rescue Services*, the Commission held that the Secretary, and Commission on appeal, can specify a licence commencement date prior to the date of its issue and that the effect of doing so would be retrospective. Doing so would allow the condition in section 92(1)(b) to be satisfied by backdating the commencement date of the licence. The Commission observed that an obvious situation where backdating would be appropriate would be in the case of a successful appeal. In such a case, it would be odd to impose by implication a restriction on the Commission's powers such that it could not restore a successful appellant to the position in which it ought to have been originally.<sup>7</sup>
61. The Commission set out the relevant principles for exercise of the discretion as follows:<sup>8</sup>

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<sup>6</sup> *Appeal by Air Rescue Services Ltd* (decision GC26/10), 5 October 2010.

<sup>7</sup> At [33](c).

<sup>8</sup> At [37].

- (a) Section 92 is a "grandfathering" provision. It provides for those who had an existing right to continue to enjoy it in the future if certain conditions are met, although no similar new rights would be conferred in the future.
- (b) The preserved position is therefore aberrant, not the general or current rule. It is difficult to discern an intention to see such aberrations preserved at all costs.
- (c) On the other hand, Parliament clearly intended that those rights should continue to be enjoyed by those who were qualified to hold them. There is no discernible intention that they should casually be lost, especially by delay or error on the part of the Secretary.
- (d) The continuity requirement is maintaining a venue licence with a gap of no more than 6 months. Difficulties may arise with delay in dealing with an application (and any appeal), whether this is the result of unwarranted delay by the Secretary or the sort of difficulties which are inevitably created when a venue undergoes redevelopment. These concerns were noted by the High Court in the *First Sovereign* decision and the Court was prepared to grant relief against them to preserve the statutory opportunity.
- (e) It would be reasonable for backdating powers to be exercised to protect the applicant against loss of statutory opportunity arising from unwarranted delay or error by the Secretary **in appropriate cases**.
- (f) The Secretary should consider whether and how an application made with a view to preserving a section 92 position can be dealt with so as to preserve the opportunity. This includes such possibilities as granting a licence for a day (to restart the calendar) as the High Court did in *First Sovereign*, granting the licence subject to extensive conditions (a possibility suggested in *First Sovereign*) or backdating the commencement date.
- (g) This does not mean that the Secretary should necessarily conclude that preservation is appropriate in all cases but, in this case, he appears to have started from the dubious position that all applications that seek to preserve the statutory opportunity are wrong in principle.
- (h) In the circumstances, there is nothing objectionable in principle in seeking a one-machine licence in order to preserve continuity (although doing so may bring section 98 into effect) or to seek a licence for premises which are undergoing renovation.

- (i) On the other hand, the history of the Venue is relevant and the Secretary has a valid point, so far as the exercise of a discretion goes, that the Venue should have been without a licence for a much longer period, the effective end date being the result of a breach by the former licence holder of a statutory obligation to surrender the licence, and a procedurally cynical appeal which preserved an unlawful position and was then abandoned. The present circumstances are very different from those before the High Court in *First Sovereign*.

62. While the Commission backdated the licence in *Air Rescue Services*, its decision to do so was expressly exceptional. The decision to backdate on the facts of that case should not be regarded as setting a precedent for future backdating in the case of broadly similar underlying facts. While the Commission, and Secretary, are expected to apply the *principles* discussed in *Air Rescue Services*, applicants should have no expectation that licences will be backdated in circumstances similar to those in that case. The Commission was not persuaded by appellant's submissions comparing the present case and the facts in *Air Rescues Services*.

63. A number of the submissions made by the parties are addressed below:

- (a) Without going as far as the appellant suggested (that the Secretary is strictly required to consider backdating in all cases in which the section 92 period has expired, even without being asked to do so), as indicated in *Air Rescue Services*<sup>9</sup>, the Commission would generally expect the Secretary to consider doing so in the case of all applications in respect of venues which had preserved section 92 rights at the time of application. Any application which appears to rely on section 92 continuity should certainly be treated as incorporating an implied request to backdate the licence issued.
- (j) As the principles set out in *Air Rescue Services* were derived from the Commission's considered view of Parliamentary intent as it appears from the statutory language, the Commission does not consider that submissions as to Parliament's alleged intent with regard to section 92 merit reconsideration of those principles.
- (k) The Secretary's view that only delays attributable to the Secretary are relevant is far too narrow an approach. The underlying concerns of the Commission related to preservation of substantive entitlements to retain 18 machines being lost purely as a result of procedural delays, outside the applicant's control,

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<sup>9</sup> At [45](c).

occurring in the course of otherwise meritorious applications. In principle, there is no reason why such considerations should not extend to unwarranted delays in processes outside of those of the Secretary and the Gambling Commission, including territorial consent processes, and the DLC and ARLA processes. In fact, it is particularly the case when the delay was materially the result of unmeritorious objections.

- (l) It would be wrong to be concerned about the length of the potential “grandparented” rights or about them passing to new parties. The continuity which section 92 requires for preservation of rights is a matter of location and time; it does not require the same operator or business. There should not be an inherent assumption that all such rights should have come to an end by now.
- (m) While exercise of the discretion would continue an aberrant state of affairs, the discretion should not be exercised on the basis of wholly negative assumptions about its potential exercise. On the other hand, there is similarly no presumption that the discretion should always be exercised, in order to preserve “grandparented” rights at all costs. Some recognition of the aberrant result is appropriate. There is a need for a proper balance to be achieved.
- (n) As to the Secretary’s submission that Tokoroa’s alleged status as a high deprivation area is a relevant consideration to the exercise of a backdating discretion, the Commission considers that the Act’s broad statutory purposes are relevant considerations in the exercise of any discretion arising under the Act. Having said that, the Commission would expect to see sufficient supporting analysis to connect local harm minimisation considerations to the specific exercise of the discretion and that was not apparent in the material provided.

64. Whether sufficient was done to maintain temporal continuity in this case may be debatable, although it seems much more likely to be the case than in *Air Rescue Services* (or a recent similar decision by the Commission<sup>10</sup>). The relevant considerations are:

- (a) The application was only filed two and a half weeks prior to the six month period ending. There was little prospect of the licence being granted prior to the expiry of that period. There were also some changes required to the premises before it could be approved.

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<sup>10</sup> *Appeal by Grassroots Trust*, (decision GC09/20).

- (b) On the other hand, the late filing of the application, and the prospect of it being granted in time, was largely attributable to the venue operator taking steps to obtain a liquor licence prior to applying. The decision to do so appears to have been the result of the Secretary's insistence, as a matter of policy, on having an issued liquor licence as a prerequisite for the grant of a venue licence, without being prepared to consider whether there might be other evidence that gaming would not be the primary activity at the venue, including floor plans and the lease, or whether to impose appropriate conditions instead.
- (c) It seems likely that the venue would have been ready to operate by the end of the six month period if there had been no objection (or appeal) in the liquor licencing process.
- (d) The delays and the appeal process in this case were caused by meritless objections and an appeal by Mr Bridle, apparently designed to thwart the appellant's ability to obtain a class 4 venue licence through imposition of cost and delay. To the extent that delays were caused by Mr Bridle's unsuccessful opposition, the Commission would consider that relevant to the exercise of the discretion to backdate.
- (e) While Youthtown suggested that it might have obtained an inactivity extension under section 71 of the Act, it did not seek one (although that is not surprising in the light of the representation discussed below).

65. While the time taken to obtain liquor licencing may be an inherent part of setting up and operating new licensed establishments, the extent to which delay in obtaining a venue licence is the result of the Secretary's insistence on a liquor licence as a prerequisite may be material. If the Secretary's insistence on an issued liquor licence were to be regarded as unwarranted in the particular circumstances, it could affect the exercise of the discretion. The Commission has previously held that an issued liquor licence is not a necessary precondition to an application being considered or approved, where other evidence is available to satisfy the requirement that the class 4 venue is not to be used mainly for operating gaming machines.<sup>11</sup> This is not an appropriate case for the Commission to address such considerations in substance and it does not do so.

66. However, the Commission considers that the outcome in this case is heavily influenced by a matter which has no factual common ground with the *Air Rescue* decision. Ms Vuong represented to Youthtown, prior to the application even being lodged, that, if the application was filed within 6 months and later approved, the venue would be permitted

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<sup>11</sup> *Southern Trust and Te Wheke Holdings*, above n 2, at [21]-[23].

operate the number of machines that it had previously been authorised to operate. After the application was filed, Ms Vuong was again asked whether the application stopped “the clock on the six month time frame as it will be getting very close to this date...As the operator wants to operate the 16 machines”. Ms Vuong responded that the “6 month timeframe has stopped”. The emails of 29 April and 29 May 2020 contained unambiguous and unconditional representations on behalf of the Secretary (albeit based on a plainly erroneous assumption) that the machine numbers would be preserved if the application were otherwise granted. That could only occur, assuming the surrender took place in December 2018 (as everyone apparently then assumed), by backdating the issued licence.

67. The Commission has not concluded that the original advice was meant to be received only as information given in the abstract. The representation was clear, unequivocal, and repeated. No objective construction of the emails permits an interpretation that they related to section 98 (and avoiding the need for a territorial local authority approval). While the suggested basis (the clock stopped by an application) was appropriate to section 98, the emails clearly refer to the preservation of an entitlement to more than nine machines. Nothing in the Secretary’s response to the DLC undermined the representations previously made.
68. Nothing in the language of the email exchanges supports the Secretary’s submission that it related to concern about the application being assessed as incomplete and returned and the complete application being treated as received only when resubmitted, with consequences under section 98. Section 98 concerns receipt of applications, not the date on which a licence is issued. Confusion between those two provisions was addressed comprehensively in the *Air Rescue Services* decision. Backdating was not conceivably required in order to avoid a territorial local authority consent being required. If the licence application were received within 6 months (and not returned as incomplete), for the purposes of section 98, no territorial consent would have been required.<sup>12</sup> Backdating the resulting licence would never have been effective to avoid that consequence.
69. Finally, the position (that she was referring to backdating under section 92 in her earlier emails) was confirmed by Ms Vuong’s 3 December 2019 email. She said:

Previously I indicated that the venue would be able to operate up to 16 gaming machines as the clock for the clock for the 6 months due to receiving the GC3.

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<sup>12</sup> *Southern Trust and Te Wheke Holdings*, above n 4, at [27]-[29].

70. In the Commission's view and based on *Air Rescue Services*, if necessary, it would have been appropriate for the Secretary to exercise his discretion to backdate the licence in order to keep faith with Ms Vuong's promises. Even if the exercise of the discretion against backdating might otherwise have been justified in the circumstances, the Commission considers that the Secretary should be required to operate with regulatory integrity and, generally speaking, to keep faith with assurances given, if possible. The need to exercise discretion for similar reasons in the future is reasonably avoidable if appropriate care is exercised in dealing with applicants.
71. If it had been necessary to do so, the Commission was unanimous that it would have exercised the discretion to backdate the licence.

### Decision

72. For the foregoing reasons, the Commission reverses the decision of the Secretary to issue the licence dated 31 January 2020, permitting the operation of only 9 gambling machines.
73. The Commission directs the Secretary to re-issue the licence, with its current commencement date, with a condition allowing 16 gaming machines to be operated.

*Lisa Hansen*

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Lisa Hansen  
Chief Gambling Commissioner

for and on behalf of the  
Gambling Commission

*LB*

April 2020

