

IN THE MATTER of the Gambling Act 2003
AND on an application by
CHRISTCHURCH CASINOS LIMITED for approval of independent experts to prepare a Casino Impact Report to accompany the renewal application for its Casino Venue Licence

BEFORE THE GAMBLING COMMISSION

Members: G L Reeves (Chief Gambling Commissioner)
L M Hansen
R D Bell
D C Matahaere-Atariki
W N Harvey

Date of Application: 2 September 2016

Date of Decision: 4 November 2016

Date of Notification
of Decision: 11th November 2016

**DECISION ON AN APPLICATION BY CHRISTCHURCH CASINOS LIMITED
FOR APPROVAL OF INDEPENDENT EXPERTS TO PREPARE A CASINO IMPACT REPORT
TO ACCOMPANY THE RENEWAL APPLICATION FOR ITS CASINO VENUE LICENCE**

Introduction

1. Christchurch Casinos Limited ("**CCL**") is undertaking the preparatory work necessary to make an application to renew its casino venue licence pursuant to section 134 of the Gambling 2003 (the "**Act**"). CCL's application must be accompanied by a casino impact report ("**CIR**") which must be prepared by someone who is approved by the Commission as being independent of CCL.
2. CCL identified two people, James Baines and Geoffrey Butcher, to draft the CIR. It submitted the CVs of these gentlemen to the Commission and requested that it approve them as being independent of CCL, pursuant to section 134(3) of the Act.

Legislation

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

134 Application for renewal of casino venue licence

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

137 Renewal of casino venue licence

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

138 Expiry of casino venue licence

- (1) A casino venue licence expires 25 years after the date the casino commenced operating.
- (2) A licence that is renewed under section 137 expires 15 years after the date of renewal.
- (3) A casino venue licence may be renewed more than once.
- (4) A casino venue licence to which an application for renewal relates continues in force until the Gambling Commission decides whether or not to renew that licence.

High Court Rules

4. Schedule 4 of the High Court Rules is as follows:

Schedule 4 – Code of conduct for expert witnesses**Duty to the court**

- 1 An expert witness has an overriding duty to assist the court impartially on relevant matters within the expert's area of expertise.
- 2 An expert witness is not an advocate for the party who engages the witness.

Evidence of expert witness

- 3 In any evidence given by an expert witness, the expert witness must—
 - (a) acknowledge that the expert witness has read this code of conduct and agrees to comply with it;
 - (b) state the expert witness' qualifications as an expert;
 - (c) state the issues the evidence of the expert witness addresses and that the evidence is within the expert's area of expertise;
 - (d) state the facts and assumptions on which the opinions of the expert witness are based;
 - (e) state the reasons for the opinions given by the expert witness;
 - (f) specify any literature or other material used or relied on in support of the opinions expressed by the expert witness;
 - (g) describe any examinations, tests, or other investigations on which the expert witness has relied and identify, and give details of the qualifications of, any person who carried them out.
- 4 If an expert witness believes that his or her evidence or any part of it may be incomplete or inaccurate without some qualification, that qualification must be stated in his or her evidence.
- 5 If an expert witness believes that his or her opinion is not a concluded opinion because of insufficient research or data or for any other reason, this must be stated in his or her evidence.

Duty to confer

- 6 An expert witness must comply with any direction of the court to—
- (a) confer with another expert witness;
 - (b) try to reach agreement with the other expert witness on matters within the field of expertise of the expert witnesses;
 - (c) prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for their disagreement.
- 7 In conferring with another expert witness, the expert witness must exercise independent and professional judgment, and must not act on the instructions or directions of any person to withhold or avoid agreement.

Submissions by CCL

5. CCL submitted, in summary, that:
- (a) It wants to engage James Baines and Geoffrey Butcher to draft the CIR to accompany its Casino Licence renewal application.
 - (b) It is confident in the ability and suitability of both consultants and believes there to be no issue in gaining approval for them to complete the required work.

Analysis

6. This is the first occasion that the Commission has had reason to consider section 134(3) of the Act and to decide on its approach to approval of the independence of persons preparing a CIR.
7. The CIR required by section 134(2)(c) is an important document. The Commission is required by section 136 to consider it before deciding whether to renew a casino licence. Under section 137(1)(c), the Commission cannot renew a casino licence unless it is satisfied that renewal will result in a net benefit to the local and regional communities and to New Zealand generally and, under section 137(2)(a), in assessing whether there is a net benefit, it must consider the social and economic effect of granting or refusing renewal. The CIR therefore addresses key matters for the satisfaction of the Commission. The Commission concluded that its approval of the independence of the CIR authors is intended to increase the likely value and integrity of those reports.
8. The Commission approached the requirement to be “independent” as being satisfied that the proposed authors have no past or present relationships, associations or interests which would materially affect their views on the subject matter of the report. It requires the Commission to consider that the nominee will form and provide his or her own impartial views, free from the influence of the applicant and related interests.

9. While CVs are relevant to that inquiry, the Commission considered that more was required. The Commission wrote to CCL on 14 October 2016 setting out the reasons why it must be satisfied of the independence of the proposed authors of the CIR before it can renew a casino licence. The Commission advised CCL that the following matters should be covered in the submissions of the proposed authors of the CIR:
- (a) a statement that the candidate has no past or present relationship, association or interest, whether professional, business or personal, which might be regarded as potentially affecting his or her impartiality in formulating the report (or, alternatively, identification of any such relationship, association or interest);
 - (b) to the extent that the candidate has previously had any relationship, association or interest in the gambling industry (including the applicant casino), the reasons why that connection should not be regarded as compromising his or her independence;
 - (c) a statement by the candidate that he or she will comply with the obligations set out in the Code of Conduct for Expert Witnesses (Schedule 4 of the High Court Rules) as if references to the court were references to the Commission and references to evidence were to the report.
10. CCL submitted statements from Mr Butcher and Mr Baines and both gentlemen confirmed they will abide by the Code of Conduct for Expert Witnesses.
11. The Commission was satisfied that neither Mr Butcher nor Mr Baines have past or present relationships, associations or interests which would materially affect their views on the subject matter of the report.

Decision of the Commission

12. The Commission approved, pursuant to section 134(3) of the Act, James Baines and Geoffrey Butcher to prepare a CIR for CCL's application to renew its Venue Licence.


Graeme Reeves
Chief Gambling Commissioner
for and on behalf of the
Gambling Commission


11th November 2016