

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

**BEFORE THE GAMBLING COMMISSION**

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

Date of Application: 8 December 2017

Date of Hearing: 4-5 December 2018

Date of Decision: 15 March 2019

Date of Notification  
of Decision: 29<sup>th</sup> March 2019

**DECISION ON APPLICATION BY CHRISTCHURCH CASINOS LIMITED TO RENEW CASINO  
VENUE LICENCE**

**1. INTRODUCTION**

- 1.1 This determination concerns an application by Christchurch Casinos Limited (**CCL**) for renewal of its casino venue licence. The application, if approved, would permit the Christchurch Casino to operate at 30-38 Victoria Street, Christchurch for a further 15 years from the expiry of its original licence.
- 1.2 CCL was granted a casino premises licence (**Licence**) under the Casino Control Act 1990 on 30 June 1993. Casino premises licences became casino venue licences pursuant to section 122(2) of the Gambling Act 2003 (**Act**). The Christchurch Casino opened its doors to the public on 4 November 1994. The Licence will expire at midnight on 3 November 2019.
- 1.3 As the Christchurch Casino was the first to open in New Zealand, this application is the first renewal application to be considered by the Commission.

**2. PROCEDURAL HISTORY**

- 2.1 Section 134 of the Act sets out the requirements of an application to renew a casino venue licence.

**134 Application for renewal of casino venue licence**

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

2.2 On 8 December 2017, CCL filed an application under section 134 to renew the Licence. The application was made within the statutory timeframe, being at least 1 year but not more than 2 years before 3 November 2019, the date on which CCL's licence will otherwise expire.

2.3 Prior to receiving CCL's application, the Commission became aware that, although it had published base forms, it had omitted to create sub-forms, relating to personal information about the applicant and persons of significant influence, to which the base forms referred. The Commission alerted CCL to the omission, indicating that it would create the necessary sub-forms.

2.4 The Commission took time to consider what specific information it should require from the applicant and persons of significant influence, including making inquiries of the Department of Internal Affairs (**DIA**) and overseas gambling regulators, before creating sub-forms for the applicant and persons of significant influence to complete. It advised CCL that its foreshadowed application should use the new sub-forms which the Commission was creating, declining CCL's suggestion that it should use forms created by the DIA for a different purpose. Despite the Commission's advice, CCL filed its application on 8 December 2017, using the sub-forms which it has been advised not to use.

2.5 The Commission subsequently informed CCL that the forms were unacceptable and that the correct sub-forms should be submitted. CCL supplemented its application by filing the

correct sub-forms on 21 May 2018. Both the original application and the additional forms were received well within the statutory timeframe.

- 2.6 In accordance with the Act's requirements, CCL's application was accompanied by a Casino Impact Report (**CIR**), titled "An assessment of the social and economic impacts of the Christchurch Casino" and dated 29 November 2017, prepared by James Baines and Geoffrey Butcher.
- 2.7 As required by section 134(3) of the Act, the CIR was prepared by persons previously approved by the Commission as independent. On 4 November 2016, in decision GC13/16, the Commission had approved Mr Baines and Mr Butcher as CIR authors and as being independent of the Christchurch Casino. When doing so, the Commission identified no additional matters on which to report, pursuant to section 134(3)(b), and no additional research to be undertaken in preparation of the CIR, pursuant to section 134(4).
- 2.8 Section 135 of the Act sets out the process for determining an application for renewal of a casino venue licence:

**135 Process for determining applications for renewal**

- (1) After receiving an application for renewal of a casino venue licence, the Gambling Commission must do the following things, although not necessarily in the order given:
- (a) investigate the applicant and persons with a significant influence under [section 125](#) to determine whether they—
    - (i) are suitable, in terms of [section 124](#); and
    - (ii) have complied with this Act and previous gaming Acts and regulations made under them:
  - (b) give public notice of the application:
  - (c) by public notice, invite written submissions on the application:
  - (d) by public notice, invite people who wish to appear and be heard at a public hearing to apply to the Gambling Commission for authorisation:
  - (e) give public notice of the commencement of hearings, and of how people may find out where and when hearings are to be held:
  - (f) make available for public inspection, subject to any agreement between the applicant and the Gambling Commission regarding confidentiality, copies of the application, any amendments to it, the casino impact report, and any other relevant documentation:
  - (g) conduct a public hearing of the application at which evidence of the parties is heard and parties may examine and cross-examine witnesses:
  - (h) give public notice of the decision of the Gambling Commission:
  - (i) make copies of the decision available to the public.

- (2) The Gambling Commission may require the Secretary to report to it on the matters referred to in subsection (1)(a) as part of its investigation under that paragraph.
- (3) Subsection (1) sets out the minimum that the Gambling Commission must do to determine an application for renewal of a casino venue licence, but the Gambling Commission may take additional steps, or repeat or combine processes, as the Gambling Commission considers appropriate.
- (4) Persons or groups who satisfy the Gambling Commission that they represent a section of the community in which the casino is located are entitled to appear and be heard at the public hearing of the application in person or by counsel or agent.
- (5) In giving public notice under subsection (1), it is sufficient for the Gambling Commission to publish the notice twice, at intervals of not more than 14 days, in a major newspaper circulating in the locality of the casino to which the application relates.

2.9 Section 125 of the Act states:

**125 Gambling Commission must investigate application concerning casino licences**

- (1) On receiving an application for a casino operator's licence or for renewal of a casino venue licence, or for approval of a proposed transferee or alienee of a casino licence, the Gambling Commission must investigate the applicant, the proposed transferee or alienee, and persons with a significant influence.
- (2) Without limiting subsection (1), the Gambling Commission—
  - (a) may require the applicant, the proposed transferee or alienee, and persons with a significant influence to consent to having their photograph and fingerprints taken; and
  - (b) may require the applicant, the proposed transferee or alienee, and persons with a significant influence to provide further information; and
  - (c) must refer a copy of the application, and any photographs, fingerprints, or other information obtained in the investigation, to the Police and any government agency (not including the Inland Revenue Department) that the Gambling Commission considers relevant.
- (3) The Police and any government agency to whom the application is referred must inquire into, and report to the Gambling Commission on, the applicant, the proposed transferee or alienee, and persons with a significant influence.
- (4) The Gambling Commission may refuse to grant a casino operator's licence or renew a casino venue licence or approve a proposed transferee or alienee of a casino licence if the applicant, transferee or alienee, or persons with a significant influence fail to provide information requested by the Gambling Commission or refuse to have fingerprints or a photograph taken.
- (5) Fingerprints and photographs provided by the Gambling Commission to the Police or other government agency must be returned to the Gambling Commission for destruction under subsection (6).
- (6) Fingerprints and photographs required by the Gambling Commission must be destroyed immediately after the Gambling Commission has made a decision as to whether or not to grant a casino operator's licence or renew a casino venue licence or approve a proposed transferee or alienee of a casino licence.

2.10 Section 124 of the Act states:

**124 Suitability requirements**

- (1) A casino operator's licence must not be granted and a casino venue licence must not be renewed unless the Gambling Commission is satisfied that the applicant and persons with a significant influence are suitable.
- (2) In considering whether an applicant or person with a significant influence is suitable, the Gambling Commission must take into account the following matters:
  - (a) the honesty of the applicant or person with a significant influence, including—
    - (i) whether the applicant or person with a significant influence has been convicted of a relevant offence; and
    - (ii) whether the applicant or person with a significant influence has been disciplined by a professional body for ethical misconduct; and
    - (iii) whether the applicant or person with a significant influence has been disciplined in any way during previous involvement with a casino; and
    - (iv) any other matters raised in the Police report, and the report of any government agency to which the application is referred, provided under [section 125](#); and
  - (b) the financial position of the applicant or person with a significant influence, including—
    - (i) whether the applicant or person with a significant influence has ever been adjudged bankrupt; and
    - (ii) whether the applicant or person with a significant influence has been directly involved in the management of a company that went into receivership or liquidation; and
    - (iii) whether the applicant or person with a significant influence has sufficient financial resources; and
    - (iv) whether the applicant or person has been prohibited or disqualified from acting as a director or promoter of, or in any way, whether directly or indirectly, being concerned or taking part in the management of, a company under [section 382](#), [383](#), or [385](#) of the Companies Act 1993; and
    - (v) whether the applicant or person has been prohibited from acting as a director or directly or indirectly being concerned, or taking part, in the management of a company under [section 299](#) of the Insolvency Act 2006; and
  - (c) the business skills of the applicant or person with a significant influence, including—
    - (i) whether the applicant or person with a significant influence has sufficient business management experience; and
    - (ii) whether the applicant or person with a significant influence has sufficient experience in casino operation or the operation of similar ventures; and
    - (iii) whether the applicant or person with a significant influence has qualifications relevant to the operation of a casino; and

- (d) the management structure of the applicant, including—
  - (i) whether that structure is suitably arranged for effective compliance with this Act; and
  - (ii) the nature of all relevant interests in the financial and management structure of the applicant; and
  - (iii) whether all such interests encourage the applicant's effective compliance with the Act; and
- (e) any other matter the Gambling Commission considers relevant.

2.11 In accordance with section 135(1)(a), the Commission sought and received responses concerning the applicant and the 15 persons identified as persons with a significant influence at the Casino from the Police, New Zealand Insolvency and Trustee Service, the NZ Companies Office, and the Department of Internal Affairs (**DIA**) as part of its investigations under section 125. Nothing of concern arose from the responses.

2.12 The Commission also gave public notice of the receipt of CCL's application as required by section 135(1)(b) and invited written submissions on the application and applications to appear at the public hearing, as required by section 135(1)(c) and (d). The public notice was published in hardcopy form in the Christchurch Press, as well as in e-form in the Press online (stuff.co.nz) and a tile on "Neighbourly" for 14 days during June and July 2018.

2.13 As required by section 135(1)(e), the Commission separately gave notice that the public hearing would commence at 10am on 4 December 2018 at the Distinction Hotel, 14 Cathedral Square, Christchurch. The hearing notice was published in hardcopy form in the Christchurch Press on 20 October, 24 October, and 10 November 2018.

2.14 The Commission received 74 written submissions on the application and four applications to appear at the public hearing from The Salvation Army Oasis (**SAO**), Problem Gambling Foundation (**PGF**), the Christchurch City Council (the **Council**), and Mr David Abbott. In decision GC18/18 (27 September 2018), the Commission authorised CCL, SAO, PGF, and the Council to appear at the public hearing on 4 December 2018.

2.15 As required by section 135(1)(f), a copy of CCL's application (including supplementary amendments), the CIR, and other relevant documents were made available for inspection at the Commission's website:

[http://www.gamblingcommission.govt.nz/gcwebsite.nsf/wpg\\_URL/Casino-Licence-Conditions-Renewal-of-Licence-for-the-Christchurch-Casino!OpenDocument](http://www.gamblingcommission.govt.nz/gcwebsite.nsf/wpg_URL/Casino-Licence-Conditions-Renewal-of-Licence-for-the-Christchurch-Casino!OpenDocument)

2.16 As required by the Commission's directions regarding the conduct of the hearing in Decision GC18/18, CCL filed, prior to the hearing, six signed statements of evidence, including statements from both Mr Baines and Mr Butcher which responded to a peer review report by Professor Paul Delfabbro of the University of Adelaide dated April 2018.

- 2.17 In April 2018, the Commission had commissioned Professor Delfabbro to undertake a critical peer review of the CIR and to report his views on it. The report was published on the website. Subsequently the Commission asked Professor Delfabbro to consider the statements in response by Mr Baines and Mr Butcher and to advise of the extent to which the responses dealt satisfactorily with the issues that he had raised. Professor Delfabbro's further report, dated November 2018, was published on the website.
- 2.18 As required by the Commission's directions in Decision GC18/18, Ms Snowden of PGF and Ms Campbell of SAO also filed, prior to the hearing, signed statements of evidence. The statements were essentially submissions, relying heavily on Professor Delfabbro's November 2018 comments, to argue that the CIR was inadequate.
- 2.19 On 3 December 2018, the Commission undertook a casino site visit, which counsel for the parties appearing were invited to attend. Counsel for PGF, SAO, and the Casino attended. The purpose of the site visit was to view the Casino premises generally, and to see CCL's facial recognition operation in action.
- 2.20 As required by section 135(1)(g), the Commission conducted a public hearing of the application at which evidence of the parties was heard and cross-examination occurred. The public hearing took place at the Distinction Hotel, 14 Cathedral Square, Christchurch on 4 and 5 December 2018.
- 2.21 At the hearing, the Commission heard oral opening submissions from CCL, the Council, PGF and SAO. Witnesses appearing before the Commission were sworn in or affirmed, confirmed the truth of their previously filed statements of evidence, and noted any required amendments.
- 2.22 The Commission heard evidence from CCL witnesses Kenneth John Matthews (Board Chair, CCL), Brett Keith Anderson (CEO, CCL), Darren John Henderson (Asset Protection and Responsible Gaming Manager, CCL), Stuart Dean Anderson (Gaming Manager, CCL) and Mr Butcher and Mr Baines (both of Taylor Baines & Butcher Partners). As part of their oral evidence, both Mr Baines and Mr Butcher submitted supplementary statements of evidence dated 4 December 2018 which addressed Professor Delfabbro's November 2018 comments and Ms Snowden and Ms Campbell's 19 November 2018 evidence. The Commission also heard evidence from Ms Paula Snowden, CEO of PGF and Ms Lisa Campbell, National Operations Manager of SAO. All witnesses were cross-examined (by counsel for PGF and SAO and counsel for CCL respectively). Several were also questioned by counsel assisting the Commission.
- 2.23 The Council did not call any evidence and its counsel did not cross-examine.

2.24 At the suggestion of the parties, and with the Commission's leave, closing submissions were submitted in writing. The Commission received closing submissions from PGF and SAO on 6 December 2018 and from CCL on 19 December 2018.

### 3. THE STATUTORY TEST FOR RENEWAL

3.1 The Act sets out the information and matters that the Commission must consider in deciding whether to renew a casino venue licence:

#### 136 Information and matters to be considered

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

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

3.2 The Commission has considered each of the matters set out at section 136(1) to (g).

3.3 The Act expressly sets out the test which the Commission must apply in considering an application to renew a casino venue licence.

#### 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.

- 3.4 The Commission must not renew a casino venue licence unless it is satisfied that all section 137(1) criteria are met. In assessing whether there is a net benefit, the Commission must consider the factors set out in section 137(2).
- 3.5 The primary question accordingly is whether the information before the Commission leaves it satisfied of each of the listed matters.
- 3.6 Only PGF made a submission on the meaning of “satisfied”, submitting with reference to *Working Capital Solutions Holdings Ltd v Pezaro*,<sup>1</sup> that “satisfied” means that there has to be an actual persuasion, or a mind not troubled by doubt or a mind which has reached a clear conclusion; that the decision-maker must be “satisfied with the preponderance of probability arrived at by due caution in light of the seriousness of the matter”.
- 3.7 As this is the first application under section 137, the Commission has not previously considered what “satisfied” means in section 137. However, it has previously considered the standard of “satisfied” when hearing appeals from decisions of the Secretary to suspend or cancel a class 4 venue licence pursuant to section 74 of the Act and whether to grant a class 4 operator’s licence pursuant to section 52 of the Act. Section 74 provides that the Secretary may suspend or cancel a class 4 venue licence if he or she is satisfied of one of four grounds, including that any of the grounds in section 67 are no longer met. Section 52 provides that the Secretary must refuse to grant a class 4 operator’s licence unless satisfied of the relevant criteria. Section 52 is thus similar to section 137 in that it contains a prohibition against granting or renewing a licence unless satisfied.
- 3.8 In *Re Phoenix Charitable Trust Ltd* the Commission stated:<sup>2</sup>

Section 52 is a licensing provision, not a penal one. It is intended to ensure that licences are only granted to applicants who satisfy the Secretary (or, on appeal, the Commission) that the section 52 grounds are or will be met. There is no starting presumption of satisfaction to be displaced. As the decision-maker must be satisfied of each of the grounds, any aspect that could result in dissatisfaction is, practically speaking, something for the applicant to deal with in such a way that satisfaction is achieved.... The key point is that section 52 requires that, in the end, doubts about satisfaction must be resolved against the application by its refusal.

- 3.9 In *Re Bluegrass Holdings Ltd* the Commission stated:<sup>3</sup>

The starting point is that there is no presumptive right to a licence; rather a licence cannot be granted unless the Secretary is satisfied of the suitability of the applicant and its key persons. The prohibition on granting a licence unless the Secretary is satisfied places the effective onus on the applicant to satisfy the Secretary in order to obtain a licence. The wording of section 52 requires

<sup>1</sup> *Working Capital Solutions Holdings Ltd v Pezaro* [2014] 3 NZLR 379.

<sup>2</sup> *Re Phoenix Charitable Trust Ltd* Gambling Commission, GC04/14, 11 April 2014 at [34].

<sup>3</sup> *Re Bluegrass Holdings Ltd* Gambling Commission, GC10/14, 1 August 2014 at [29] – [30]. See also *Air Rescue Services Ltd* Gambling Commission, GC14/15, 19 May 2015 and *First Sovereign Trust Ltd* Gambling Commission, GC17/14, 7 November 2014.

doubts about satisfaction of the section 52 requirements to be resolved in favour of refusal of the licence.

- 3.10 The Commission also had regard to decisions under section 66 of the Commerce Act 1986 as being helpful by analogy. Section 66 provides that a person who proposes to acquire assets of a business or shares may seek clearance for the acquisition from the Commerce Commission, and the Commerce Commission shall either “[i]f it is satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market, ... give a clearance for the acquisition” or “[i]f it is not satisfied that the acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market, ... decline to give a clearance for the acquisition.”
- 3.11 In *Commerce Commission v Woolworths Ltd*<sup>4</sup> the Court of Appeal held that the correct approach to section 66 is to grant a clearance only if satisfied that a substantial lessening of competition is not likely (rather than granting a clearance unless satisfied that such an effect was likely).<sup>5</sup> In applying this test “it is open to the Commission or Court to decline a clearance and say that, ‘We are not sure and therefore we are not satisfied that there will be no substantial lessening of competition’...”<sup>6</sup> The Court cited Keith J in *Commerce Commission v Southern Cross Medical Care* – “...if the applicant does not satisfy the Commission that its acquisition will not have the forbidden effects, it simply states that it is not satisfied”<sup>7</sup> – and noted that it broadly agreed.<sup>8</sup> The Court also held:<sup>9</sup>

We agree ... that if the Commission is “in doubt” it should decline a clearance, this was not intended to adopt the concept of a “reasonable doubt” as the expression is used in the criminal law. For the present purposes, the existence of a “doubt” corresponds to a failure to exclude a real chance of a substantial lessening of competition.

...

We agree that the Commission can be expected to engage in an inquisitorial process in which it would make a reasonable inquiry into the merits or otherwise of the clearance that is sought. The decision to grant or refuse a clearance is necessarily to be made on the basis of all the evidence. So the situation is not really analogous to that of a plaintiff in a civil case who either proves his or her case or loses.

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

<sup>4</sup> *Commerce Commission v Woolworths Ltd* [2008] NZCA 276.

<sup>5</sup> At [107].

<sup>6</sup> At [207](a).

<sup>7</sup> (2001) 10 TCLR 269 (CA) at [101].

<sup>8</sup> *Commerce Commission v Woolworths Ltd* [2008] NZCA 276 at [95].

<sup>9</sup> At [98]; [101].

**4. FIRST CRITERION – SUITABILITY OF APPLICANT/PERSONS WITH SIGNIFICANT INFLUENCE: SECTION 137(1)(a)**

4.1 Section 137(1)(a) provides that the Commission must not renew a casino venue licence unless satisfied that the applicant and persons with a significant influence are suitable in terms of section 124 and the suitability requirements set out in that provision.

4.2 The Commission required the applicant and each person to complete detailed personal information forms. It spent some time considering the information that it needed before creating forms for that purpose. The Commission required CCL's completion of those forms in preference to the more limited information originally submitted without guidance from the Commission. Completion of the detailed forms assisted the Commission in assessing suitability.

4.3 The Commission sought and received reports on CCL and the persons identified as having significant influence from the Police, New Zealand Insolvency and Trustee Service, and the NZ Companies Office.

4.4 All entities reported that they saw no suitability issues in terms of section 124. No submissions to the contrary were received by the Commission. The Commission is satisfied, under section 137(1)(a), that CCL and the persons with a significant influence are suitable in terms of section 124.

**5. SECOND CRITERION – COMPLIANCE RECORD OF APPLICANT AND PERSONS WITH SIGNIFICANT INFLUENCE: SECTION 137(1)(b)**

5.1 Section 137(1)(b) provides that the Commission must not renew a casino venue licence unless satisfied that the compliance record of the applicant and persons with significant influence is satisfactory. The detailed information forms referred to above extended to information about compliance.

5.2 The Commission sought and received information from DIA concerning compliance records for the period 2001 to 2017. The DIA reported that it considered CCL's compliance record overall to be "very good and has no concerns to bring to the Commission's attention".<sup>10</sup>

5.3 The DIA report recorded that an audit of CCL's compliance with the AML/CFT Act was carried out in April 2017 and found the Casino to be largely compliant with that Act with adequate measures in place to mitigate against the Casino being used for money laundering and/or to contribute to the financing of terrorism.<sup>11</sup>

5.4 It noted several compliance incidents over the years but was satisfied that the breaches were of a one-off nature, rather than indicating a systemic failure or issue. Significant

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<sup>10</sup> DIA response dated 11 July 2018, p 1.

<sup>11</sup> Ibid, p 4.

compliance issues identified were CCL's breach of its HRP on four occasions (April 2013, May 2013, May 2015, and June 2016). On the third and fourth breach, DIA decided that a suspension of the licence was not warranted because of the relatively minor nature of the breaches and CCL's proactive approach to dealing with the issues involved. Warning letters were issued for all four HRP breaches.<sup>12</sup>

5.5 The DIA also noted CCL's poor performance in its 2014 and 2016 Mystery Shopper assessments, with a slight improvement in the latter. In 2016, of three scenarios enacted, two of the three did not meet the DIA's expectations. One of these instances involved a mystery shopper at a machine for six hours without any recorded staff intervention.<sup>13</sup>

5.6 While there is certainly room for improvement in CCL's compliance overall, the requirement is not that the compliance record be unblemished but satisfactory. In the light of the information before it, the Commission is satisfied that CCL's compliance record is satisfactory for the purposes of section 137(1)(b).

## 6. THIRD CRITERION – NET BENEFIT: SECTION 137(1)(c)

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

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

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

### CIR

6.2 Section 134(3) of the Act provides that a CIR 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.

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<sup>12</sup> Ibid, p 3.

<sup>13</sup> Ibid, p 3.

- 6.3 The social and economic effects of granting or refusing to grant the renewal were analysed in detail in the CIR, which runs to 270 pages and includes an executive summary of 18 pages. Preparation of the CIR took place between December 2016 and November 2017.
- 6.4 The CIR indicated that its authors adopted a participatory process, facilitating and seeking direct input from more than 110 stakeholder groups and organisations. They included casino visitors/patrons; the households and social networks of casino patrons; social agencies which provide support services to casino patrons and “affected others”; local residents who live in the vicinity of the casino; the owners and employees of neighbouring businesses in the vicinity of the casino and tourism businesses; casino employees and their households; the owners and employees of businesses which provide goods or services to the casino; the beneficiaries of organisations which receive grants from the charitable trust or sponsorship from the casino or which receive fundraising assistance from the casino.
- 6.5 The CIR refers to reported experience of harm, including differing racial and ethnic experiences of casino related harm. The CIR authors refer to attempts to consult with representatives of a number of ethnic groups (Te Runanga o Ngai Tahu, Ngai Tuahuriri, Mahaanui Kura Taiao, Rehua Marae and Nga Hau e Wha; six Pasifika leaders and a Community Board Pasifika representative; the Chinese Association, Canterbury and the Guangdong Association; and the Indian Association) “with little success”.<sup>14</sup>
- 6.6 Social impacts of granting or refusing the renewal were analysed in the CIR, with reference to the Casino being a major entertainment option for the City and its residents, a high-profile tourist attraction, and a source of job opportunities as well as the significant role it played in post-quake redevelopment.
- 6.7 Reported positive social effects included the enjoyment of entertainment or social recreation available within the Casino (whether associated with gambling or visits to the Casino’s restaurants or bars); the employment related benefits for those who work at the Casino; the benefits to nearby businesses or businesses which supply goods or services to the Casino, or tourism businesses; the benefits to residents of central Christchurch from the increased availability or accessibility of services which are in part supported by the Casino, such as the convenience store opposite the Casino; and the benefits associated with the activities of funding recipients, whether they receive financial assistance via the Christchurch Casino Charitable Trust, via corporate sponsorships directly from the Casino, or via other forms of fundraising assistance such as use of Sixty6 on Peterborough.<sup>15</sup>
- 6.8 Reported negative social effects included the harm caused to Casino patrons who gamble beyond their means or in a manner which causes harm to them and others in their household, family/whanau and wider social networks; a range of illegal or criminal

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<sup>14</sup> CIR, p 119.

<sup>15</sup> CIR, pp 77 – 112.

behaviours or other undesirable behaviours associated with gambling at the Casino; and adverse effects on nearby residential amenities associated with the behaviours of intoxicated patrons.<sup>16</sup>

- 6.9 Predicting the effect of closure in terms of the extent of harm avoided was said to be highly uncertain. The CIR estimated that between 31% and 50% of patrons who currently gamble on the Casino's EGMs could transfer their appetite for gambling to other less well-regulated modes of gambling.<sup>17</sup>
- 6.10 In relation to the net economic impact of the Casino, the CIR concluded that the Christchurch Casino leads to an estimated 95 Full Time Equivalent (FTE) jobs in Christchurch and an additional \$23 million per year of added value, including \$6 million per year of additional earned household income.<sup>18</sup> The Canterbury net impacts were said to be 104 FTE extra jobs and \$26 million per year of extra value added, including \$9 million per year of additional earned income.<sup>19</sup> At the national level, the Casino was said to increase real Gross Disposable National Income by \$70-140 million per year and to generate approximately \$18 million per year in tax directly, albeit offset in part by the loss of tax from businesses which lose spending to the Casino.<sup>20</sup> The net positive economic impacts would be reversed if the Casino were to close.

#### Professor Delfabbro peer review

- 6.11 The Commission engaged Professor Paul Delfabbro to peer review the CIR. While Professor Delfabbro made observations about areas in which the CIR research could have been more extensive and urged a degree of caution about how well supported some of the proffered conclusions were, he concluded that it comprehensively covered the social and economic impacts of granting, or refusing to grant, the renewal.<sup>21</sup>

In my opinion the CIR covers a range of highly relevant areas; it has examined both the social and economic impact of the Casino; and it has engaged with different stakeholders (the industry, local business and community groups.) It also provides some primary data from surveys and interviews with good representation from local business community connected to the Casino as well as data from Casino employees.

Overall the report has both strengths and limitations. In my view the report provides a comprehensive coverage of the social and economic impacts of the Casino's operations as required under the Act.

- 6.12 In their initial written statements of evidence, Mr Baines and Mr Butcher responded to issues raised by Professor Delfabbro and other submitters. The authors explained the different

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<sup>16</sup> CIR, pp 112 – 148.

<sup>17</sup> CIR, paras 155-156, p xviii.

<sup>18</sup> CIR, para 44, p v.

<sup>19</sup> CIR, para 44, p v.

<sup>20</sup> CIR, paras 45-46, p vi.

<sup>21</sup> Statement of Evidence of James Talbot Baines dated 5 November 2018 at [6]; [20]-[21].

methodologies and data used, provided further analytical data and provided additional clarification.

- 6.13 In his evidence, Mr Baines stated “the CIR does not in any way try to minimise the importance and extent of social harm caused by gambling at the Casino”<sup>22</sup> and that “the CIR represents a genuine attempt to provide a comprehensive and balanced set of information about social effects and includes evidence on social harm within the broader context of all the social and economic effects.”<sup>23</sup>
- 6.14 In his evidence Mr Butcher noted that the input-output models which he used in the CIR were the most appropriate models to use for local and regional modelling,<sup>24</sup> and that, contrary to PGF’s submissions, he had reported on the local (Christchurch) and regional (Canterbury) impacts on employment, household income, and value added, as well as the expected New Zealand impacts on value added.<sup>25</sup>
- 6.15 In his second report, which considered the responses to his earlier review of the CIR, Professor Delfabbro accepted the explanations given in paragraphs 15 – 18 of Mr Butcher’s initial written evidence as providing adequate clarification.<sup>26</sup>
- 6.16 In the same report, Professor Delfabbro also largely accepted the explanations given in Mr Baines’s evidence,<sup>27</sup> but noted some points of departure. Professor Delfabbro questioned whether the sample size of 402 enabled one to conclude anything useful about gambling at the Casino (as opposed to gambling in all Christchurch gambling venues),<sup>28</sup> observed that references to the distribution of PGSI scores is more about the prevalence of riskier patterns of behaviour which may lead to harm than about measures of harm,<sup>29</sup> and maintained that it would have been reasonable to draw on Australian research in the CIR in an area where the local sample size did not allow analysis.<sup>30</sup>
- 6.17 Professor Delfabbro concluded his second report by stating that his earlier view of the soundness of the CIR remained unchanged:<sup>31</sup>

In conclusion, I underscore my earlier statements that the Butcher and Baines report is comprehensive and thorough ...

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<sup>22</sup> Ibid, at [93.1].

<sup>23</sup> At [93.2].

<sup>24</sup> Statement of Evidence of Geoffrey Vernon Butcher dated 5 November 2018 at [8].

<sup>25</sup> Ibid, at [19].

<sup>26</sup> Professor Delfabbro November 2018 comments, para 2.2 – 2.5.

<sup>27</sup> Ibid, paras 3.2 – 3.15.

<sup>28</sup> Ibid, para 3.4.

<sup>29</sup> Ibid, para 3.5.

<sup>30</sup> Ibid, para 3.14 – 3.15.

<sup>31</sup> Ibid, para 3.16.

### Criticisms of the CIR's social and economic analysis

- 6.18 In their written evidence, both Ms Snowden of PGF and Ms Campbell of SAO suggested that the CIR's social and economic analysis contained shortcomings or defects which meant the CIR should be given reduced weight. At the hearing, after the evidence of Messrs Baines and Butcher, while accepting that a number of the concerns raised had been addressed, counsel for PGF and SAO submitted that other inadequacies in the CIR meant the Commission did not have sufficient information before it. However, neither PGF nor SAO took the opportunity to offer better information or research to supplement or contradict the contents of the CIR.
- 6.19 The closing position of PGF, in one case supported by SAO, was that the following shortcomings of the CIR's social and economic effects analysis were of concern:
- (a) The CIR's economic analysis only considered two scenarios (the status quo of the Casino continuing to operate and the alternative of the Casino ceasing to operate) as opposed to considering multiple scenarios involving various EGM percentage reductions [PGF position].
  - (b) The CIR's social impacts analysis failed to differentiate between the harm caused by different modes of gambling and ought to have considered the relative harm caused by each mode of gambling and the social impact of changing table and EGM ratios [PGF position].
  - (c) The CIR's consideration of expected social and economic effects should have been more clearly guided by the purposes of the Act. It ought to have addressed the effects of options to further control gambling growth, prevent gambling harm, further limit opportunities for crime associated with gambling, and ensure more proceeds from gambling benefit the community [PGF position].
  - (d) The CIR was deficient because it only reported on matters covered by markets and monetary transactions (financial effects) and not on non-market costs and benefits (economic effects) [PGF, with SAO in support].
- 6.20 The Commission is not persuaded of the alleged deficiencies in the CIR's social and economic impacts analysis. The first three criticisms are not soundly based in the legislation, they criticise the CIR for not considering a scenario which the Act does not require the CIR to address. The last criticism is untrue as a matter of substantive analysis.
- 6.21 Its reasons for so concluding are as follows:
- (a) A CIR is expressly required to address only the status quo and the closure of the Casino in its economic analysis. Quite aside from the logistical difficulties and

likely ineffectiveness of attempting to do otherwise,<sup>32</sup> the wording of section 134(3)(a) is clear that a CIR is only required to consider the effects of two scenarios; namely, “the continued operation of the casino” (which plainly points to current mode of operation of the casino rather than hypothetical EGM/table configurations) and “the closure of the casino”.

- (b) The CIR is not required to report on the harm caused by different gambling modes nor the social impact of changing table and EGM ratios. Attempting to do so would be beyond the scope of the matters that a CIR is required to address under section 134(3).
- (c) The CIR is not specifically required to be guided by the purposes of the Act in considering expected social and economic effects in the manner PGF contends. Unless there is a particular initiative based on the Act’s purposes which has a projected outcome capable of analysis, the type of analysis PGF suggested would be beyond the scope of the matters that a CIR is required to address under section 134(3). There is nothing before the Commission to indicate that such an initiative exists.
- (d) The Commission does not accept the contention that non-market costs and benefits (economic effects) were not reported on in the CIR. Mr Butcher said, in his supplementary evidence, that “[e]conomic impacts have both a market and non-market component” and he reported on the market component while Mr Baines covered the non-market effects.<sup>33</sup> In his oral evidence Mr Butcher further explained that economics includes a non-market component and that he and Mr Baines “did address the non-market parts but I didn’t try and put a financial value on it.”<sup>34</sup> Mr Butcher defended the CIR methodology of putting numerical values on the financial parts of the economic impacts analysis and otherwise describing the non-financial parts because of the “enormous range of uncertainty” with the latter.<sup>35</sup> He cited the example of trying to put an economic figure on the harm from problem gambling – the Australian Productivity Commission’s range of numbers was between \$560 and \$52,000.<sup>36</sup> He expressed the view that attempting to use ranges of that size in analysis led to numbers so far apart that they lacked

<sup>32</sup> See, for example, the evidence of Mr Butcher in cross examination in which he reiterated that while it was possible to consider alternatives, the answers would have been unreliable due to the uncertainty surrounding factors needing consideration, and the analysis could not have been done to a reasonable level of certainty. At Transcript of proceeding before the Commission 4 – 5 December 2018 (**Transcript**), pp 90 – 93.

<sup>33</sup> Supplementary evidence of Geoffrey Butcher dated 4 December 2018, at [10].

<sup>34</sup> Transcript, p 98, lines 22-26.

<sup>35</sup> Transcript, p 98, line 1.

<sup>36</sup> Transcript, p 97, lines 36 - 38.

practical analytical utility and it was better to describe the non-financial parts and leave the final assessment to Commissioners.<sup>37</sup>

The Commission agrees. It considers that it would have been unhelpful to attempt to assign financial values to non-market effects. Mr Baines's description of the effects in his social assessment enables the Commission to decide whether it is satisfied that renewal will result in net benefit on the basis of the CIR.

- 6.22 The Commission considers that the CIR and the peer review which it commissioned provided sufficient assistance for it to analyse the social and economic effects of granting, or refusing to grant, the renewal for the purposes of the net benefit analysis under section 137(1)(c). On the basis of the CIR, the Commission is satisfied that the social and economic effects of granting renewal weigh positively in the net benefit analysis.

*Level of support for the application, including the result of any poll conducted by the local authority*

Submissions received

- 6.23 The Commission received a total of 74 written submissions on CCL's application. Of these, 64 were in favour of CCL's licence being renewed, 7 were opposed, and 3 were neutral. Those in favour of the application were generally staff members of the Casino, local businesses, and charitable trust recipients, all of whom expected to benefit from the continued operation of the Casino. Those opposing renewal tended to be individuals affected by problem gambling.
- 6.24 General themes covered in the written submissions supporting CCL's application included the Casino's role in shoring up Christchurch's post-earthquake economy and community, including through charitable giving, tourism, entertainment, and as an employer and a responsible and safe host of gambling. General themes covered in the written submissions against CCL's application for renewal include the negative impact of problem gambling on the community, the ineffectiveness of existing harm minimisation practices, and the Casino's limited charitable giving in comparison to the profit that it generates.
- 6.25 Of the submissions received, the Council was the only party with local representative status. Initially the Council chose neither to support nor to oppose CCL's application. In the course of the hearing, it changed to a position of support after CCL agreed to accept new licence conditions setting out minimum amounts of annual funding for its independent charitable trust and a further discretionary fund.
- 6.26 The Council did not conduct any poll to establish the level of local support for the application.

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<sup>37</sup> Transcript, p 98, lines 1 - 10.

## CIR

- 6.27 The CIR connected strongly with people and groups that supported renewal, many of whom had a vested interest in the Casino's continued operation (eg local businesses, charitable trust recipients).
- 6.28 Attempts to consult with representatives of a number of ethnic groups were met "with little success".<sup>38</sup> The CIR refers to unsuccessful approaches to:
- (a) Te Runanga o Ngai Tahu, Ngai Tuahuriri, Mahaanui Kura Taiao, Rehua Marae and Nga Hau e Wha;
  - (b) six Pasifika leaders and to a Community Board Pasifika representative (facilitated by the Ministry for Pacific Peoples);
  - (c) the Chinese Association, Canterbury and the Guangdong Association; and
  - (d) the Indian Association.
- 6.29 Mr Baines's supplementary statement of evidence (dated 4 December 2018) elaborated further on the extent of consultation activities initiated with various ethnic groups.<sup>39</sup>

## Professor Delfabbro peer review

- 6.30 Professor Delfabbro's April 2018 peer review stated: "[i]n [his] opinion, the CIR covers a range of highly relevant areas... and it has engaged with different stakeholders (the industry, local business and community groups). It also provides some primary data from surveys and interviews with good representation from local business community connected to the Casino as well as data from Casino employees."<sup>40</sup>
- 6.31 In their initial written evidence, both Mr Baines and Mr Butcher responded to critical comments made by Professor Delfabbro and other submitters. Of relevance, Mr Baines rejected the suggestion that the absence of further venue-based PGSI research or of local community attitudes constituted a significant limitation on the data sources available.<sup>41</sup> He acknowledged that there are challenges in conducting and interpreting attitudinal surveys as distinct from simple public opinion polls.<sup>42</sup>
- 6.32 In his second report of November 2018, Professor Delfabbro noted that the CIR respondents who were consistently positive about the ongoing operation of the Casino were supply chain partners, charitable trusts and corporate sponsorship recipients, all of whom benefit from the Casino's operation,<sup>43</sup> which meant that "it is questionable that the CIR

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<sup>38</sup> CIR, p 119.

<sup>39</sup> Supplementary statement of evidence of James Baines dated 4 December 2008, [12] – [17].

<sup>40</sup> CIR at [6].

<sup>41</sup> At [60].

<sup>42</sup> At [91].

<sup>43</sup> Professor Delfabbro November 2018 comments, [3.9].

adequately captured the views of what might be called the “broader community”.<sup>44</sup> He noted that the vast majority of written submissions received were brief and that around 90% appeared to be in support of licence renewal.<sup>45</sup> He concluded:<sup>46</sup>

In conclusion, I underscore my earlier statements that the Butcher and Baines report is comprehensive and thorough and that it provides a lot of positive feedback in support of the renewal of the casino licence. Those positive sentiments are also reflected in the general tone of the submissions.

- 6.33 Professor Delfabbro commented on “the narrow range of public submissions in addition to the narrowness of the community consultation responses for the CIR”,<sup>47</sup> saying that “[t]he vast majority of the submissions are very brief and generally contain little more than an endorsement or disapproval of the licence continuation”<sup>48</sup> and “strongly reflect the vested and personal experience of the parties concerned” – with endorsement coming from parties who work at the Casino, have dealings with the Casino, receive financial or other benefits from the Casino’s operation, and those who work in tourism, hospitality and entertainment and adverse submissions from parties affected by problem gambling or whose principal organisational mission is to address problem gambling.<sup>49</sup>
- 6.34 He observed that the resultant relative lack of feedback from the wider community was unsurprising – “unless members of community feel directly affected by something, they seldom feel compelled to file submissions.”<sup>50</sup>

#### Criticisms of level of support information

- 6.35 PGF and SAO submitted that the Commission does not have sufficient information before it, from the public submissions received and the CIR, regarding the level of support for renewal. Their principal arguments were as follows:
- (a) At the hearing, counsel for both PGF and SAO initially challenged the Council’s standing to appear, arguing that the Council had “side-stepped” section 136(f) by not conducting an opinion poll or community consultation process and that, as a result, it was inappropriate for the Council to participate at the hearing as another public submitter under section 136(d).
- (b) PGF retreated from its opening position in closing submissions, acknowledging that, while it is “not mandatory” for a local authority to conduct a community poll, section 137(2)(b) “anticipates” that it will be done. It asserted that section 136(d) submissions could not be considered a substitute for, or alternative to, the Council conveying its views after community consultation under section 135(f).

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<sup>44</sup> Ibid, [3.12].

<sup>45</sup> Ibid, [3.18].

<sup>46</sup> Ibid, [3.16].

<sup>47</sup> Ibid, [3.17].

<sup>48</sup> Ibid, [3.18].

<sup>49</sup> Ibid, [3.19].

<sup>50</sup> Ibid, [3.20].

- (c) PGF submitted that the Council's choice not to carry out community consultation left the Commission with insufficient information to assess whether there is net benefit under section 137(1)(c).
  - (d) On the basis of Professor Delfabbro's November 2018 comments, PGF and SAO submitted that the majority of respondents in support of the application were those who benefit from the Casino's continued operation and that neither the written submissions received, nor the CIR, adequately captured the views of the "broader community".
- 6.36 Both PGF and SAO submitted that the Commission should adjourn the proceeding and take additional steps to address the deficiencies identified so that the Commission would have sufficient information to make an assessment of net benefit.
- 6.37 The Commission disagrees and has concluded that no adjournment to obtain further information is necessary.
- 6.38 Regarding the first criticism, the Commission considers that the Council had standing to appear at the public hearing and that its standing was not dependent on the Council conducting a community poll.
- 6.39 Local authorities have been given a statutory role in the collection of public views. Provision is made for mandatory consideration by the Commission of the views of a local authority after an opinion poll or community consultation process under section 137(f). If an opinion poll is conducted by a local authority, the Commission must consider the results in its assessment of the level of support for the application as part of its critical assessment of net benefit under section 137(2)(b). The Act does not, however, require local authorities to undertake an opinion poll or community consultation process; it merely provides for the results of any such process to receive special deliberative weight. A local authority's standing to appear is not dependent on it conducting polling or consultation.
- 6.40 This conclusion follows from the plain and ordinary meaning of the words in sections 136(f), 136(d) and 137(2)(b). Section 136 sets out information and matters that the Commission must consider before deciding whether to renew the licence – these include "any written submissions and other written and oral evidence" (section 136(d)) and "any views conveyed by a local authority after an opinion poll or community consultation process" (section 136(f)). The use of the word "any" in sections 136(d) and (f) (and also in section 136(c)) contrasts with its absence in sections 136(a), (b), (e) and (g), indicating that the Commission is required to consider the matters identified in sections 136(d), (f) and (c) only if there are any such matters.
- 6.41 The Commission considers that the legislation contains nothing to support what would amount to a local authority veto by inaction of a casino venue renewal application.

Parliament did not impose a mandatory obligation on local authorities to undertake polling or community consultation and did not make the receipt of the results of any such process essential to the Commission's assessment.

- 6.42 In the present application, the Council chose not to conduct an opinion poll or other community consultation but did make written submissions as it was entitled to do. It also applied to be heard at the hearing and its appearance was authorised in decision GC18/18. Any objection by PGF and SAO to the Council's standing should have been advanced prior to decision GC18/18. As it transpired, PGF and SAO subsequently accepted that the Council was not required to conduct polling and community consultation in order to have standing to appear at the hearing as a submitter.
- 6.43 The Commission agrees with PGF and SAO that the Council's submissions, made under s136(d), are not to be treated as a substitute for, or alternative to, for the Council conveying its views after community consultation under section 135(f). The Council's submissions accordingly did not receive the additional weight which they would have carried if they had been made under section 136(f).
- 6.44 In the particular circumstances of this application, the Commission does not consider that the absence of a community poll resulted in there being insufficient information to make an assessment of the level of community support.
- 6.45 As required by the Act, the Commission gave public notice of the application (section 135(1)(b)). By public notice it invited written submissions on the application (section 135(1)(c)). By public notice, it invited people who wished to appear and be heard at a public hearing to apply to the Commission for authorisation (section 135(1)(d)). It gave public notice of the commencement of hearings and of how people could find out where and when hearings are to be held (section 135(1)(e)) and made available for public inspection copies of the relevant documentation (section 135(1)(f)). It conducted a public hearing of the application at which evidence of the parties were heard and parties had the opportunity to examine and cross-examine witnesses (section 135(1)(g)).
- 6.46 In addition to the requisite public notifications (the details of which are set out at 2.12 of this decision), the Commission learned that the application had also been the subject of additional publicity. A front-page article in the Christchurch Press dated 31 July 2018 entitled "Opposition to renewal of city casino's licence" informed the readership that the closing date for public submissions to the Commission was 8 August 2018. Of the 74 written submissions received, only two predated the Christchurch Press article. The Commission concluded that members of the public who wished to indicate their support for or opposition to the renewal application were well aware of the opportunity to make submissions.

6.47 The Commission also rejects the argument that the CIR and the written public responses were deficient because they predominately captured the positive views of respondents who benefit from the Casino's operations. That submission is based on the unwarranted assumption of the existence of widespread strong negative views which did not come before the Commission. Professor Delfabbro observed that the relative lack of feedback from the wider community was unsurprising – "unless members of community feel directly affected by something, they seldom feel compelled to file submissions."<sup>51</sup> The Commission considers that the lack of negative response from other groups in the wider community, including Maori and ethnic groups, more likely indicates relative indifference to the issue of renewal or otherwise than a decision not to make the Commission (or the CIR authors) aware of their negative views.

6.48 The Commission also rejects the proposition that the views of those who did not make submissions or respond to inquiries by the CIR authors, in circumstances where opportunities to provide those views were given but not utilised, must be obtained before the application can be determined. In *Hamilton City v Electricity Distribution Commission*, the Court noted that consultation does not require the party consulted to respond:<sup>52</sup>

The requirement of consultation is not to be treated perfunctorily as a mere formality but is nevertheless subject to the condition or assumption that the supply authorities would be ready and willing to avail themselves of a reasonable opportunity to state their views.

Although no supply authority could be forced to advance any views, it would be unreasonable if the Commission could be prevented from appointing a conciliator because one or more supply authority had no view, or did not wish, or declined to express any view.

Finally supply authorities could not complain if, having both the time and opportunity, they limited the extent to which they availed themselves of the opportunity and extent to which they gave expression to their view.

6.49 The statutory process provides publicly notified opportunities for interested groups and individuals to provide views and information to the Commission. It also provides for (but does not require) public consultation to be done by local authorities. The Act imposes no additional express consultation obligations on the Commission and there is little scope for implying additional obligations. If the opportunities to express views were not taken up, the Commission concludes that it is entitled to draw the conclusion that most people notified were neutral and, of those whose views were sufficiently strong to motivate a response, most supported renewal.

6.50 The Commission concludes, on the material before it in this case, that the level of support for the application weighs positively in the net benefit analysis.

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<sup>51</sup> *Ibid*, [3.20].

<sup>52</sup> *Hamilton City v Electricity Distribution Commission* [1972] NZLR 605 at p 643.

*Nature and standard of the casino facilities*

- 6.51 In assessing net benefit under section 137(1)(c), the Commission must also consider the nature and standard of the casino facilities (section 137(2)(c)).
- 6.52 The Casino currently operates 36 tables and 500 EGMs. The tables have a variety of game mixes approved for use, the most common of which include Blackjack, Roulette, Baccarat, Money Wheel, Tai Sai, together with a number of forms of Poker. The Casino currently opens 16 hours per day Monday to Thursday (from 11am-3am) and 24 hours a day from Friday to Sunday. Prior to the earthquakes, the Casino operated 24 hours a day, seven days a week, and may return to those hours in the future.
- 6.53 In addition to its gaming spaces, the following entertainment facilities also operate within the Casino building:
- (a) The Grand Café – the Casino’s largest restaurant, catering for between 180 - 200 guests.
  - (b) The Chi Kitchen – an authentic Cantonese restaurant catering for between 46 - 60 guests.
  - (c) The Monza Sports Bar – a relaxed dining option with capacity for 100 - 120 guests.
  - (d) The Valley Bar – servicing the gaming areas of the Casino with limited bar seating for approximately 20-30 guests.
  - (e) Sixty6 on Peterborough – a specialist function venue that can accommodate almost any type of function (for example, a cocktail party for 430, a theatre style event for 350, or a sit-down dinner for 300). Sixty6 on Peterborough has been used for fundraising events, as well as on a commercial basis.
- 6.54 Complete refurbishments have been made through all public areas within the last 10 years, with further refurbishments currently in the concept design phase.
- 6.55 As at 1 April 2017, the Casino employed 478 people, including 154 in the Gaming division and 155 in the Food and Beverage Services division. Staff are given extensive HRP training, including on responsible service of alcohol.
- 6.56 The Casino has an established dress code that Casino patrons must adhere to and established behavioural standards. The Casino ensures a safe and secure environment through its security and surveillance activities.
- 6.57 None of the submissions advanced anything adverse to satisfaction of this criterion and the Commission is satisfied that the nature and standard of the Casino’s facilities weigh positively in the net benefit analysis.

*Miscellaneous submissions*

- 6.58 The Commission addresses a written submission made by PGF and SAO (but not pursued actively at the hearing) that Treaty of Waitangi (**Treaty**) obligations and obligations to consult other ethnic groups overlay the process for CCL's renewal application and were not adequately discharged. Broadly, the concerns centred around the insufficiency of representation of the viewpoints of Maori and other ethnic groups in the material before the Commission (as addressed above) and an alleged failure to discharge Treaty principles of active protection and consultation.
- 6.59 Neither the PGF nor SAO are representative of the ethnic or other sectional interest groups about which they raised concerns. Although each asserted that there were inadequacies in the CIR, neither put forward additional substantive information on the views or interests of those groups.
- 6.60 At the hearing, Mr Baines gave evidence of the extensive enquiries and attempts to consult with Maori, Pasifika, Indian, and Chinese communities in preparing the CIR.<sup>53</sup> After hearing the evidence of Mr Baines, the point was not pursued further in closing but, as this is the first casino venue renewal application, the Commission addresses the issue raised.
- 6.61 The Act makes no reference to the Treaty. In the absence of a reference to the Treaty in legislation, statutory decision makers are generally free of legal obligations arising from the Treaty. Absence of reference may be interpreted as an indication that Treaty matters have been considered by Parliament, which has decided not to include a reference to the Treaty, or a Parliamentary intention that Maori should address any concerns arising from the legislation to the Waitangi Tribunal. Unless given force by an Act of Parliament, Treaty duties do not generally give rise to legal obligations.
- 6.62 The Commission concludes that, in the absence of express reference to the Treaty or its principles in the Act and anything in the subject matter to imply an obligation to observe or apply Treaty principles, it has no obligation to consider CCL's application in light of Treaty principles. None of the entities asserting Treaty obligations were Treaty partners and no representative of a Treaty partner made submissions to the Commission.
- 6.63 As to consultation with ethnic groups more generally, the statutory process on a renewal decision provides many well-publicised opportunities for the views of ethnic groups to be received and considered. None of the submissions nor applications to appear claimed to represent any ethnic group and the only applicant to claim representational status was the Council.
- 6.64 The Commission received a CIR which records that the authors sought, but were largely unsuccessful in obtaining, views from several ethnic groups on the impact of the

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<sup>53</sup> Supplementary statement of evidence of James Baines dated 4 December 2008, [12] – [17].

continuation or closure of the casino. Mr Baines's supplementary statement of evidence further elaborated on the extent of consultation activities initiated.<sup>54</sup>

- 6.65 The Commission concludes that the lack of response from the ethnic groups approached likely indicates that they were largely indifferent on the issue of renewal or otherwise as particularly affecting their community. The Commission sees little scope for implying obligations beyond those set out in the Act. The Commission concludes that nothing more is required.

## **7. CONCLUSION ON RENEWAL DECISION**

- 7.1 Overall, the Commission is satisfied that all section 137(1) criteria are met for the reasons set out above. It has concluded that CCL's licence should be renewed.

## **8. CONDITIONS IN CCL LICENCE IDENTIFIED FOR REVISION**

- 8.1 Section 139(1)(b) provides expressly that the Commission may specify, vary or revoke the conditions of a casino licence "on renewing a casino venue licence." As the Commission is satisfied that it should renew CCL's licence, it now considers whether the current conditions in CCL's licence should be varied or additional conditions specified.

- 8.2 The Commission received several submissions, some of them supported by all parties, advocating changes to the casino venue licence conditions. The submissions sought amendment of the charitable trust condition, a condition to make provision for a community liaison group, and enhanced harm minimisation conditions. They are addressed separately below.

## **9. CHARITABLE TRUST CONDITION**

- 9.1 Christchurch Casino is currently the only casino in New Zealand that is not subject to a minimum level of funding for the charitable trust which it is required to support under the casino venue licence. Conditions 14 and 15 of the casino venue licence provide as follows:

14. The Licence Holder shall support the Christchurch Casinos Charitable Trust established by Deed of Trust dated 31 October 1994 to undertake the objectives and purposes set out in the said Trust Deed.
15. The Licence Holder is required to ask the Trust on an annual basis to provide a list of persons granted funding for the previous year and in what amount, and a list of unsuccessful applicants for funding. The Licence Holder is required to publish annually the amount paid to the Trust, and the information provided to it by the Trust relating to the allocation of funds, as specified in this condition.

- 9.2 Although CCL is obliged to support the charitable trust, there is no stipulated minimum level of funding. All other casino venue licences in New Zealand contain a condition specifying a

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<sup>54</sup> Supplementary statement of evidence of James Baines dated 4 December 2008, [12] – [17].

minimum level of funding for an independent charitable trust. The minimum payment requirements vary from casino to casino, but in general terms range from 1 – 1.5% of revenue or 2.5% of net profit, sometimes with an additional stipulated minimum amount (eg \$500,000 (Auckland), \$100,000 (Queenstown)).

- 9.3 The absence of a minimum level of funding to the charitable trust and the effect of its absence was raised by the Council and by SAO. The Council suggested that the minimum should be the greater of 2.5% of net profit or \$500,000 per annum. SAO argued for a minimum level of funding in line with the requirements applying to the Class 4 corporate societies (namely, 40% of net proceeds) or alternatively no less than required of other casinos.

*Evidence and submissions on proposed charitable trust condition*

- 9.4 In his statement of evidence, Mr Matthews, the Chair of CCL, stated that CCL was willing to accept conditions stipulating a minimum level of funding. The position was confirmed in CCL's submissions at the hearing. It presented draft conditions for consideration.
- 9.5 In summary, CCL proposed a minimum payment of "not less than 2.5% of the net profit after tax from the onsite business of the Casino, or \$250,000 per annum, whichever is the greater." CCL also proposed a separate Discretionary Charitable Fund condition, providing for additional payments totalling \$100,000 annually to charitable organisations, on the basis that no direct commercial advantage accrued to CCL as a result of such payment, with any shortfall from \$100,000 being paid to the charitable trust by way of additional support. The result would have CCL committing to a minimum total payment for charitable purposes of \$350,000 annually, of which at least \$250,000 would be received by the charitable trust.
- 9.6 Mr Matthews was called as a witness for CCL at the hearing. He pointed out that the proposed condition for CCL to contribute no less than 2.5% of the net profit after tax from onsite business aligns with the obligations attached to the Auckland casino.<sup>55</sup> As to the proposed minimum figure of \$250,000 per annum, Mr Matthews advised that the figure represents approximately 2.5% of CCL's current tax paid profit<sup>56</sup> and compared favourably to the Auckland casino minimum in the light of their size difference (as Auckland casino is ten times larger than the Christchurch Casino).<sup>57</sup> Mr Matthews expressed confidence that CCL would be able to sustain minimum payments totalling \$350,000 per year.<sup>58</sup>
- 9.7 In response to questioning by the Commission, Mr Anderson (CEO of CCL) expressed confidence that CCL could honour the commitment to the proposed minimum annual

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<sup>55</sup> Transcript, p 19, lines 16-20.

<sup>56</sup> Transcript, p 19, lines 19 – 20.

<sup>57</sup> Transcript, p 19, lines 22 - 24.

<sup>58</sup> Transcript, p 28, lines 35 - 37.

contribution “in good times and bad”, commenting that the needs of the community do not change whether the Casino is performing well or otherwise.<sup>59</sup>

- 9.8 The condition presented by CCL had been drafted in consultation with the Council, PGF and SAO. As a result of CCL’s agreement to propose the condition, the Council moved from a position of neutrality to one of support for the application. The other parties did not ultimately argue for a different condition from that presented by CCL. In particular, SAO did not argue in closing that the community benefit from casino gambling should be set by reference to class 4 requirements and Ms Campbell accepted in evidence that the earlier position advanced regarding alignment with Class 4 gambling returns was no longer maintained<sup>60</sup>.

*Previous Commission consideration of Charitable Trust conditions*

- 9.9 The Commission previously considered charitable trust licence conditions in several interim and final decisions reviewing the conditions of the New Zealand casinos between 2005 and 2008.
- 9.10 In the Hamilton and Queenstown casinos final review decision (GC21/07, 8 October 2007) the Commission decided that no immediate change to the contribution formula for individual casinos should be made until it had undertaken a broad review involving all casino licences. That view was maintained in all subsequent casino licence review decisions (Christchurch, Dunedin, Otago and Wharf).<sup>61</sup>
- 9.11 No nationwide review of Charitable Trust licence conditions has subsequently occurred.

*Analysis*

- 9.12 The Commission decided that it was desirable to amend the CCL venue licence to impose a minimum contribution. Having regard to the length of time that CCL had been the only venue licence holder with no minimum contribution and the apparent adverse effect of the absence of a minimum contribution on the amounts made available to its charitable trust compared to other casinos, the Commission considered that it was appropriate to amend the venue licence conditions to change the somewhat anomalous position of CCL without further delay, even if a wider review remained in prospect.
- 9.13 CCL’s historic rate of contribution has fluctuated, with an average downward trend. The CIR recorded that total annual distributions in the casino’s first decade of operation averaged approximately \$194,000 but, since 2005, they dropped to averaging closer to \$141,000.<sup>62</sup> Comparing the Christchurch Casino (which has 36 tables) with Hamilton Casino (which has

<sup>59</sup> Transcript, p 55, lines 31- 34.

<sup>60</sup> Transcript, p 164, lines 7 - 9.

<sup>61</sup> See Christchurch interim review decision GC25/07 dated 3 December 2007; Dunedin interim review decision GC01/08 dated 3 March 2008; Otago/Wharf casino interim review decision GC02/08 dated 3 March 2008.

<sup>62</sup> CIR, para 5.7.1 p 73.

23 tables), Christchurch Casino has self-evidently contributed significantly less. Despite its contributions only starting from 2004 and its smaller size, Hamilton Casino's total contributions to its charitable trust (\$8,848,934) are more than double those of Christchurch Casino, since 1995 (\$4,374,000).

- 9.14 Specifying an annual minimum for funding the charitable trust is consistent with one of the Act's express purposes (ensuring that money from gambling benefits the community<sup>63</sup>). Specifying a minimum contribution in a licence condition is one of the mechanisms by which the Commission can advance that statutory purpose. It has not generally been the Commission's policy to leave achievement of statutory purposes to licence holders' discretion.
- 9.15 The amended conditions proposed by CCL, in consultation with the other parties appearing, have been used by the Commission as the basis for a variation to the conditions of the casino venue licence under section 139(1)(b). The variations add to condition 14 a minimum amount of financial support by CCL for the charitable trust, add a new condition 16 requiring CCL to make available to the charitable trust a website or webpage on which the trust may make information available to the public and a new condition 17 giving CCL the option of making additional direct charitable payments to a value of \$100,000 annually or paying the balance of that sum to the charitable trust as further support. The Commission made minor amendments to the proposed conditions to clarify the obligations appropriately, to maintain consistency with other provisions and to reflect the fact that the charitable trust is independent of CCL and is not the casino venue licence holder.
- 9.16 For the foregoing reasons, the Commission varies CCL's casino venue licence conditions in the terms set out in the annexure to this decision. The variation will take effect from 1 April 2019. It is possible that the Commission may undertake a general review of charitable trust conditions in the future. The possibility of future variation of the new conditions arising out of such a review should be noted.
- 9.17 Although not pursued in closing argument, the Commission considered that it should address the argument originally advanced that the community benefits received from casino gambling should be set by reference to Class 4 gambling obligations. Casino gambling and Class 4 gambling differ in many respects, including the type and scale of the gambling activity permitted and the number of licences available or existing. One of the most fundamental differences is in the underlying nature of the licence holders. Casino licences are held by commercial businesses, many of which are owned by listed public companies, and all of which are expected to provide returns to their shareholders.

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<sup>63</sup> Section 3(g)

9.18 In contrast, Class 4 licences may only be held by “corporate societies”, a term which is defined<sup>64</sup> to include only entities under the Incorporated Societies Act 1908, registered charities, working men’s clubs and companies which lack the capacity or power to make a profit and which operate solely for authorised purposes. Class 4 gambling itself is defined<sup>65</sup> as requiring all net proceeds from gambling to be distributed or applied for “authorised purposes”, a term itself defined<sup>66</sup> as being limited to charitable purposes, non-commercial purposes benefitting the community and promoting race meetings. In summary, Class 4 societies must be “not for profit” entities and distribute all net gambling proceeds for community benefit. As no similar requirements or restrictions apply to casino gambling, the Commission rejects the suggestion that an appropriate guide to the expected community benefits from casino gambling are the rules applying to Class 4 gambling.

## 10. PROPOSED COMMUNITY LIAISON GROUP CONDITION

10.1 Submissions from the Council and from SAO called for a community liaison group to be established. However, on detailed examination the submissions did not advocate the creation of a group to fulfil a broad community liaison and consultation function, as has been the case in some other venue licences, but rather a group focussed on harm minimisation matters. CCL consented to the creation of a community liaison group and, as was the case with the charitable trust minimum contribution conditions, presented proposed conditions which had been endorsed by the Council and SAO.

10.2 As the Council and SAO noted, the CCL venue licence currently makes no provision for a community liaison group. The venue licence conditions of four of the other five casinos in New Zealand provide for local community liaison groups. Those conditions generally provide that the licence holder will meet the actual and reasonable costs of the liaison group and set out the expected composition of the group. The only other casino that does not have a community liaison group set out in its venue licence is Auckland Casino.

10.3 While the Auckland and Christchurch casino venue licences do not establish and provide for a community liaison group, the casino operator’s licences for all New Zealand casinos provide for a responsible gambling programme, known as a Host Responsibility Programme (HRP), approved by the Commission and reviewed periodically. Every casino HRP makes provision for problem gambling liaison meetings to be held periodically.

10.4 Specifically, CCL’s casino operator’s licence provides, in condition 26(o) as follows:

The Programme shall be consistent with and impose no lesser requirement than specified in the Act or Regulations. The Programme shall address and not be limited to:

<sup>64</sup> Section 2, Gambling Act 2003

<sup>65</sup> Section 30, Gambling Act 2003

<sup>66</sup> Section 2, Gambling Act 2003

...

(o) liaison with problem gambling treatment providers, community service organisations and community representatives...

10.5 The detailed requirements for problem gambling liaison meetings are set out in section 2.4 of the Christchurch HRP, headed "Stakeholder engagement". They include regular problem gambling liaison meetings to which treatment providers, (including PGF and SAO), the Council and government agencies (including DIA and the Police) must be invited.

10.6 In its application, CCL noted:<sup>67</sup>

CCL convenes Problem Gambling Liaison Meetings three times per year. These are usually attended by representatives of PGF and the Salvation Army OASIS Centre, DIA Casino Inspectors and representatives of telephone helpline services. These meetings provide an opportunity for CCL to provide updates on recent Host Responsibility activities and initiatives, discuss any Host Responsibility issues, and for the counselling representatives to provide feedback to CCL. PGF and the Salvation Army OASIS centre have acknowledged that these meetings are 'open and transparent'. Outside of these meetings, the Casino's Host Responsibility Executive visits PGF to process self-exclusions, and staff members from PGF and OASIS have visited the Casino to gain a better understanding of the gambling environment their clients experience.

10.7 Counsel for PGF and SAO cross-examined CCL witnesses, in particular Mr Anderson, the Chief Executive, concerning the ability and willingness of CCL to provide various items of information to participants in the proposed liaison group meetings. The evidence indicated that the information identified would be made available.

10.8 During the hearing, CCL agreed that there was no reason not to provide the following documents to those attending the problem gambling liaison meetings:

- (a) The information which it is required to provide to the Commission annually at pages 38 – 39 of its current HRP.<sup>68</sup> The information data could be provided on a rolling basis,<sup>69</sup> being current up to the month prior to the meeting taking place.<sup>70</sup>
- (b) In addition to a rolling snapshot of current data, the trend of the data for the last year/two year period.<sup>71</sup>
- (c) Analysis of log book information and any key trends or key concerns the Casino has in relation to this.<sup>72</sup>
- (d) Records of staff interventions (the number of staff interventions and outcomes of these interventions), with staff member names withheld for privacy reasons, for the three months preceding meetings.<sup>73</sup>

<sup>67</sup> CCL application, para 127.

<sup>68</sup> Mr Anderson, Transcript, p 37, line 38.

<sup>69</sup> Ibid.

<sup>70</sup> Mr Anderson, Transcript, p 38, lines 6 – 8.

<sup>71</sup> Transcript, p 38, lines 20 -29.

<sup>72</sup> Mr Anderson, Transcript p 48, line 35.

- (e) Information concerning what the Casino refers to treatment providers.<sup>74</sup>
- (f) Information/reports from the DIA on the Casino's compliance.<sup>75</sup>
- (g) Annual independent audit of outcomes of HRP.<sup>76</sup>
- (h) Information specific to vulnerable ethnicities (Maori, Pacifica, Asian).<sup>77</sup>
- (i) A three-yearly report on Servizio data.<sup>78</sup>
- (j) Regular updates on facial recognition technology including how it is used and any technological advances taking place.<sup>79</sup>

*Previous consideration of Community Liaison Group conditions*

10.9 In the Otago Wharf interim review decision (GC02/08, 3 March 2008), the Commission declined to move the community liaison and consultation group condition from the venue licence to the operator's licence. It considered that the condition was more appropriately located in the venue licence.<sup>80</sup>

10.10 In the Hamilton/Queenstown interim review decision (GC10/07, 25 June 2007), the Commission considered a proposal for a revised community liaison group "to liaise 2 monthly regarding matters of harm minimisation" and "to consult with relevant community representatives (council, government, inter-faith, business) regarding any key proposal for change (such as hours of operation, an increase of ATM access) or an emerging community impact concern (eg crime increase in the vicinity)".<sup>81</sup> The Commission relevantly commented as follows:

- (a) Apart from the Monitoring Group, the Commission is aware that the Licence Holder convenes a casino liaison group, made up of representatives of treatment providers, and the DIA. It meets every two months, with a focus, it is understood, on discussion of harm minimisation matters. The Commission has formally recognised the value of groups such as this by amending licence conditions to require that Host Responsibility Programmes for Hamilton and Queenstown provide for liaison with problem gambling treatment providers, community service organisations and community representatives.<sup>82</sup>
- (b) The submissions made by the Hamilton Casino Monitoring Group and others identified a continuing and distinct need for the provision of community input into proposals under consideration by the Commission, the DIA or the Licence Holder. The proposal to end the current Group and institute a new one in licence conditions was rejected in favour of retaining the existing Hamilton

<sup>73</sup> Mr Anderson, Transcript, p 49, lines 1 – 9.

<sup>74</sup> Mr Anderson, Transcript, p49, line 28.

<sup>75</sup> Mr Anderson, Transcript, p50, line 9.

<sup>76</sup> Mr Anderson, Transcript, p 50.

<sup>77</sup> Mr Anderson, Transcript, pp 50 – 51.

<sup>78</sup> Mr Henderson, Transcript, p 72, line 38.

<sup>79</sup> Mr Henderson, Transcript, p 74, lines 35 – 37.

<sup>80</sup> Otago Wharf interim review decision GC0208 dated 3 March 2008, para 3.11.

<sup>81</sup> Hamilton/Queenstown interim review determination GC10/07 dated 25 June 2007, para 5.7.

<sup>82</sup> Ibid, para 5.13.

Casino Monitoring Group, but making its function clearer (including its role in liaison activities), and streamlining the membership process for the Group.<sup>83</sup>

- (c) The Commission appointed "for the time being, the current representative of the Chief Executive of the Hamilton City Council" to be the convenor, noting that it expected the Group to propose any future replacement appointments. It also determined that the size and makeup of the Group may vary at different points in time, depending on the issue at hand.<sup>84</sup>

#### *Analysis*

- 10.11 As will be apparent from the above decisions, the Commission has maintained a distinction between community liaison and consultation groups (created under the casino venue licence to provide a mechanism for community representatives to have input into applications concerning the venue licence which come before the Commission) and problem gambling liaison meetings (required by casino HRPs approved by the Commission pursuant to each casino's operator's licence). At the hearing, the Council accepted that there would be no need to duplicate a requirement by adding a condition to the venue licence if the operator's licence currently had a condition requiring the HRP to provide for problem gambling liaison meetings.<sup>85</sup> In short, the substance, rather than the location, of the obligation was said to be important.
- 10.12 It should be clear from the foregoing that the Commission has made separate provision for community liaison and consultation groups, under various casino venue licences, and for problem gambling liaison meetings, under HRPs provided for in all casino operators' licences. The proposals made to the Commission in the course of the application appeared to seek the former as a matter of form, but the supporting reasoning and the intended function of the proposed group clearly reflected the latter.
- 10.13 The Commission is satisfied that no case has been made out for conditions requiring a community liaison and consultation group to be added to the Christchurch casino venue licence. The community liaison and consultation group conditions in other casino venue licences do not have a problem gambling or harm minimisation focus but are aimed at reflecting broader community interests which might be required when considering changes to the casino venue licence.
- 10.14 The desirability of separate consultation involving harm treatment service providers, appropriate community groups and government agencies on matters relating to problem gambling is well established and supported by the Commission. As a result, however, it is already provided for. Provision for harm minimisation consultation is not appropriately made in casino venue licences but rather in casino operator's licences. In practice, casino operators' licences do not set out harm minimisation obligations in detail but rather make provision for the detail to be set out in HRPs. In contrast to casino venue and casino

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<sup>83</sup> Ibid, para 5.14.

<sup>84</sup> Ibid, para 5.15.

<sup>85</sup> Transcript, p 134, liens 12 – 22.

operators' licence conditions, HRP's are subjected to regular review by the Commission. The present requirement is for review every two years. Every review is notified to interested parties, such as PGF and SAO, who are entitled to make submissions.

- 10.15 The last Christchurch HRP review was in late 2017. The current HRP was approved by the Commission in decision GC20/17 (27 October 2017). In the 2017 review, no party sought changes to section 2.4 and no amendments to the section were made. The Christchurch HRP is due to be reviewed again in late 2019.
- 10.16 The Commission considers that the current licence conditions are appropriate. It declines to amend the casino venue licence to insert a new condition for a community liaison group. It expects to review the Christchurch HRP later in 2019. When it does so, the Council and SAO will have the opportunity to suggest improvements to the current HRP provisions for problem gambling liaison meetings, including such matters as minimum frequency, required invitees and provision of information to attendees and to make reference to the evidence given before the Commission concerning the availability of information for that purpose.
- 10.17 The Commission considers that HRP reviews should be properly focused and adopt a holistic approach to best harm minimisation practice. They are not suited to piecemeal amendment in the course of other applications and the Commission has not made a practice of doing so previously.

## **11. HARM MINIMISATION CONDITIONS**

- 11.1 Eleven submitters commented positively, either generally or specifically, on aspects of the Christchurch Casino's HRP (S Anderson, S McClelland, Glenn Lilly (SignAds), T Azouri, SKYCITY Entertainment Group, S A Hintz, NZ Metropolitan Trotting Club, Ideation Media - Chris Hair, John Scheller, Greg Angell, Dunedin Casinos Limited). Three submitters commented negatively (T Clarke, R Whyte, M Rapley).
- 11.2 In addition to a proposed community liaison group condition (addressed above), SAO made submissions seeking the imposition of obligations relating to mandatory counselling for excluded patrons, better access to criteria for re-entry after exclusion and elevated conditions for re-entry. The submissions did not make clear the manner in which the suggested obligations should be imposed.
- 11.3 For similar reasons to those set out in the preceding section, the Commission considers that exclusions and conditions of re-entry are operational matters, not appropriately the subject of casino venue licence conditions. Operational obligations are usually imposed by conditions in casino operators' licences. In the area of problem gambling and harm minimisation, the practice has been for obligations of that type to be set out in the casino's

HRP. Under its casino operator's licence, CCL is required to ensure that the casino is operated in compliance with its HRP.<sup>86</sup>

11.4 Condition 26 of CCL's operator's licence for the Christchurch Casino specifies the matters which must be included in the HRP as follows:

- 26 The Programme shall be consistent with and impose no lesser requirement than specified in the Act or Regulations. The Programme shall address and not be limited to:
- (a) the provision of information for customers relating to game rules, permissible bets and payment of winning bets pursuant to section 175 of the Act;
  - (b) the provision of signage, brochures and publications, and the effective display and distribution of the same, to inform gamblers of the odds of winning on gaming machines, how to gamble safely, the characteristics of problem gambling and the availability of counselling and other support services;
  - (c) the provision of loss and expenditure data to individual loyalty programme members;
  - (d) identification of problem gamblers and steps to be taken following identification. This shall include, as a minimum, the following:
    - (i) an acceptable definition of problem gambling;
    - (ii) indicators of problem gambling in the gambling venue;
    - (iii) the steps to be taken by the Licence Holder in identifying problem gamblers;
    - (iv) the steps to be taken by the Licence Holder following identification of problem gamblers;
  - (e) the provision of staff training;
  - (f) the provision of exclusion, self-exclusion and limitation programmes;
  - (g) assistance to casino employees with managing the potential for personal problem gambling;
  - (h) recognition of cultural differences amongst gamblers using the Casino, and the need to tailor delivery of host responsibility obligations to maximise effectiveness for customers;
  - (i) guidelines for responsible marketing and advertising of the Casino, including exterior signage, and restrictions on jackpot advertising and branding pursuant to Regulations 9 and 10 of the Gambling (Harm Prevention and Minimisation) Regulations 2004;
  - (j) responsible practices in the conduct of promotions and inducements to gamble at the Casino;
  - (k) design of the Gambling Area to minimise problem gambling behaviour and to maximise the likelihood that episodes of problem gambling will be noticed and addressed by staff;
  - (l) promotion of the responsible consumption of alcohol, including provision of staff training in responsible service of alcohol;
  - (m) standards of dress and behaviour at the casino;

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<sup>86</sup> Condition 24.

- (n) liaison with patrons with gambling problems, and family members of patrons with gambling problems;
- (o) liaison with problem gambling treatment providers, community service organisations and community representatives;
- (p) the provision of a safe gambling environment at the casino; and
- (q) such other matters as the Commission may require.

Condition 26(f) requires the HRP to address exclusion programmes, which includes conditions for re-entry after exclusion.

- 11.5 CCL's HRP must be revised and reviewed by the Commission at least every two years. The Commission consults with interested parties in the course of the review and amends the HRP as it sees fit after doing so.<sup>87</sup> The current version of CCL's HRP was last approved after the Commission's review in October 2017.<sup>88</sup>

#### *Analysis*

- 11.6 The submissions raise matters which are appropriately dealt with in the HRP, not in conditions of the casino venue licence. The casino operator's licence already provides for the matters raised to be addressed in the HRP and the HRP does so.<sup>89</sup> At the last review of the Christchurch HRP in October 2017, none of the proposed obligations were raised (although opposition to the removal of similar conditions of re-entry had been unsuccessful in the preceding Auckland casino review<sup>90</sup>).
- 11.7 CCL's operator licence provides that the Commission must review the HRP for Christchurch Casino every two years.<sup>91</sup> The HRP is due to be reviewed again in late 2019. Observations set out in paragraphs 10.15 and 10.16 above, concerning problem gambling liaison meetings, apply equally to suggested improvements to the current HRP provisions dealing with exclusions and re-entry. It will be appropriate to consider such suggestions in the course of the 2019 review. The Commission declines to amend either of the casino licences to deal with matters which are already required to be the subject of the HRP.

## **12. DECISION**

- 12.1 The Commission is satisfied that CCL's casino venue licence should be renewed and grants the application for renewal accordingly, pursuant to section 137.
- 12.2 In addition, it makes orders under section 139(1)(b) varying the casino venue licence by replacing the current conditions 14 and 15 with new conditions 14, 15, 16 and 17, as set out

<sup>87</sup> Condition 29, CCL casino operator's licence

<sup>88</sup> Decision on the Amendment of the Host Responsibility Programme for the Christchurch Casino, GC20/17, 6 October 2017.

<sup>89</sup> CCL HRP, section 2.1.1, CCL PGIP sections 4 and 5.

<sup>90</sup> Decision on the Amendment of the Responsible Gambling Programme for the Auckland Casino, GC11/17, 28 July 2017.

<sup>91</sup> CCL's operator's licence, condition 29.

the **annexure** to this decision (with a consequent re-numbering of the casino venue licence conditions). The new conditions take effect from 1 April 2019. It declines to effect the other variations suggested.



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Graeme Reeves

Chief Gambling Commissioner

for and on behalf of the  
Gambling Commission

29<sup>th</sup>

March 20



## ANNEXURE

### Independent Charitable Trust

14. The Licence Holder shall financially support the Christchurch Casinos Charitable Trust established by the Deed of Trust dated 31 October 1994 to undertake the objectives and purposes set out in the said Trust Deed. The Licence Holder shall pay to the Trust, in respect of each full year of the operation of the Casino, not less than 2.5% of the net profit after tax from the onsite businesses of the Casino, or \$250,000 per annum, whichever is the greater. The Licence Holder is required to provide annually to the Commission an audited statement certifying the amount constituting 2.5% of the net profit after tax from the on-site businesses of the Casino, and confirming that payment by the Licence Holder to the Trust has been made in accordance with this condition.
15. The Licence Holder is required to ask the Trust on an annual basis to provide a list of persons granted funding for the previous year and in what amount, and a list of unsuccessful applicants for funding. The Licence Holder is required to publish annually the amount paid to the Trust, and the information provided to it by the Trust relating to the allocation of funds, as specified in this condition.
16. The Licence Holder must make available to the Trust a dedicated website or webpage on which information about the Trust may be made publicly available, including:
  - (a) the Trust deed;
  - (b) information about how to apply for funding from the Trust; and
  - (c) the details of the organisations that received funding from the Trust for each year, and the amount distributed, including the location of the grant recipient in each case.
17. In addition to its support of the Trust, the Licence Holder may, at its discretion, make payments to any of:
  - (a) St John New Zealand;
  - (b) The Ronald McDonald House;
  - (c) The Canterbury Westland Rescue Trust
  - (d) REACH Child Cancer;
  - (e) Cholmondeley Children's Centre;
  - (f) surf lifesaving clubs;
  - (g) Christchurch City Mission;
  - (h) Rata Foundation,

or other similar charitable organisations. The Licence Holder shall ensure that none of the charitable organisations to which payments under this condition are made have a direct association with gambling activities. The Licence Holder shall ensure that payments made

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