

IN THE MATTER of the Gambling Act 2003


AND on an application by **DUNEDIN CASINOS LIMITED** for approval of independent experts to prepare a Casino Impact Report to accompany the renewal application for its Casino Venue Licence

BEFORE THE GAMBLING COMMISSION

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

Date of Application: 15 December 2020

Dates of Decision: 5 February 2021, 5 March 2021

Date of Notification
of Decision:  March 2021

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

Introduction

1. Dunedin Casinos Limited ("**DCL**") is undertaking the preparatory work necessary to make an application to renew its casino venue licence, pursuant to section 134 of the Gambling 2003 (the "**Act**"). DCL's application must be accompanied by a casino impact report ("**CIR**") which must be prepared by someone who is approved by the Commission as being independent of DCL.
2. DCL identified two people, Brent Wheeler and Carl Davidson, to prepare the CIR.

Legislation

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

134 Application for renewal of casino venue licence

- (1) The holder of a casino venue licence may apply to the Gambling Commission to renew the licence.

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

137 Renewal of casino venue licence

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

138 Expiry of casino venue licence

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

High Court Rules

4. Each of the nominees provided a written undertaking that he would comply with the Code of Conduct for Expert Witnesses as set out in Schedule 4 of the High Court Rules as follows:

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

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

Evidence of expert witness

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

Duty to confer

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

Submissions by DCL

5. DCL submitted, in summary, as follows:
- (a) It wants to engage Brent Wheeler and Carl Davidson to prepare the CIR to accompany its casino licence renewal application. Mr Wheeler will prepare the economic assessment of the CIR and Mr Davidson will prepare the social assessment.
 - (b) It has provided the Commission with the following for each proposed expert:
 - (i) a statement of independence;
 - (ii) an undertaking that he will comply with the Code of Conduct for Expert Witnesses set out in Schedule 4 of the High Court Rules;
 - (iii) a CV.

These documents should provide the Commission with sufficient information to make a decision about the independence of Messrs Wheeler and Davidson, and their suitability to prepare the CIR.
 - (c) It seeks the Commission's approval to engage Messrs Wheeler and Davidson, pursuant to section 134(3) of the Act.
 - (d) It asks the Commission to indicate whether there are any additional matters which should be reported on in the CIR.

Analysis

6. As the first step in submitting an application to renew its casino venue licence, DCL has submitted an application, pursuant to section 134(3) of the Act, for Brent Wheeler and Carl Davidson to be approved as being independent of DCL. This is the second such

application considered by the Commission, the first being by Christchurch Casinos Limited (“CCL”), in relation to the renewal of its venue licence (see decision GC13/16).

7. The CIR, required by section 134(2)(c), is an important document and the Commission is required by section 136 to consider it before deciding whether to renew a casino licence.
8. Under section 137(1)(c), the Commission cannot renew a casino licence unless it is satisfied that renewal will result in a net benefit to the local and regional communities and to New Zealand generally and, under section 137(2)(a), in assessing whether there is a net benefit, it must consider the social and economic effect of granting or refusing renewal.
9. The CIR therefore addresses key matters for the satisfaction of the Commission. The Commission’s view is that its approval of the independence of the CIR authors is intended to increase the likely value and integrity of those reports.
10. In decision GC13/16, the Commission approached the requirement to be “independent” as being satisfied that the proposed authors have no past or present relationships, associations or interests which would materially affect their views on the subject matter of the report. It requires the Commission to consider that the nominee will form and provide his or her own impartial views, free from the influence of the applicant and related interests. The Commission remains of the view that this is the correct approach.
11. In support of its submission that Messrs Wheeler and Davidson are independent of it, DCL provided the Commission with the following:
 - (a) a CV for each candidate setting out their relevant experience;
 - (b) a statement that each candidate is independent from DCL, stating that he has no past or present relationship, association or interest, whether professional, business or personal, which might be regarded as potentially affecting his impartiality in formulating the report. To the extent that they have previously had any relationship, association or interest in the gambling industry (including DCL), the reasons why that connection should not be regarded as compromising their independence;
 - (c) a statement by each candidate that he will comply with the obligations set out in the Code of Conduct for Expert Witnesses (Schedule 4 of the High Court Rules).
12. The Commission considered the information provided and was satisfied that neither Mr Wheeler nor Mr Davidson have past or present relationships, associations or interests which would materially affect their views on the subject matter of the report.

Matters identified by the Commission

13. In addition to addressing the independence of the CIR authors, section 134(3) sets out additional provisions in relation to the content of the CIR. Sub-section (a) sets out the essential compulsory subject matter (expected social and economic effects of both continued operation and closure of the casino locally, regionally and nationally), while sub-section (b) makes provision for “matters identified by the Commission” to be added as subjects of the CIR.
14. When considering the application by CCL to renew its venue licence, the Commission did not require the authors of that CIR to report on any additional matters pursuant to section 134(3)(b). However, with the benefit of hindsight, the Commission considers that it would have been assisted if that CIR had addressed certain additional matters.
15. The Commission has identified two additional matters that DCL’s CIR must report on. Pursuant to section 134(3)(b) of the Act, the Commission directs the CIR to report on:
- the amenities and facilities at the casino;
 - the level of support locally, regionally and nationally for the continued operation of the casino.
16. Both matters arise under section 137(1)(c) of the Act, which sets out one of the matters of which the Commission must be satisfied before it may renew the licence; namely that renewal will result in a net benefit to the local and regional communities and to New Zealand generally. Section 137(2) specifies the matters which the Commission must consider in making that assessment, 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; and
 - (c) the nature and standard of the casino facilities.
17. The Commission and interested parties will be assisted in their consideration of DCL’s application by the CIR reporting on the abovementioned additional topics.

Specifying research

18. Section 134(4) of the Act also empowers the Commission to “specify the research to be undertaken in preparing” a CIR. This power enables the Commission to provide some direction regarding the research to be undertaken. If nothing is specified, the research

relied upon for the CIR will be a matter for the judgement of the authors. The research can be directed both at the essential subject matter, under section 134(3)(a) and any additional matters added, under section 134(3)(b).

19. Pursuant to section 134(4) of the Act, the Commission specifies that the following information be gathered and analysed in preparing the CIR:

Facilities

- prior casino expenditure on improvements;
- casino capital works budget; and
- survey responses from past visitors regarding the standard of the casino facilities (as an additional topic to the survey below).

Economic effects

- Use existing data held by the casino in relation to the residence of the customers, their reasons for visiting, the frequency of their visits and their expenditure.
- Use existing data held by local authority or tourism organisations on the extent and importance of visits to the casino by tourists.
- In both cases, endeavour to identify the extent to which the visiting the casino was a reason for, or part of, the planned tourist experience.

Support for the application

- Undertake a randomised survey (either panel or phone), aiming at a sample of approximately 400 participants in each group, who reside in the city, who reside outside the city but within the region, and New Zealand residents outside the region. Analyse by reference to population characteristics (age, gender, ethnicity). For those who have visited the casino, ask additional questions about facilities, frequency of visitation, expenditure.

20. In identifying the additional matters for inclusion in the CIR, pursuant to section 134(3)(b), and the research specified pursuant to section 134(4), the Commission was assisted by Professor Paul Delfabbro from the University of Adelaide. Professor Delfabbro is conversant with applications to renew casino venue licences in New Zealand, having advised the Commission on CCL's licence renewal application.

Decision of the Commission

21. The Commission approved, pursuant to section 134(3) of the Act, Brent Wheeler and Carl Davidson to prepare a CIR for DCL's application to renew its Venue Licence.

- 22. The Commission directs, pursuant to section 134(3)(b) of the Act, that the CIR to report on the two additional matters identified in paragraph 15 above.
- 23. The Commission specifies, pursuant to section 134(4) of the Act, that the CIR use the research information identified in paragraph 19 above in preparing the CIR.



Lisa Hansen
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

 March 2021

