

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

**AND** on an application by **DUNEDIN CASINOS LIMITED** for approval of new 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)  
W N Harvey  
S C L Pearson

Date of Application: 27 May 2021

Dates of Decision: 2 July 2021

Date of Notification  
of Decision: 15 July 2021

**DECISION ON AN APPLICATION BY DUNEDIN CASINOS LIMITED  
FOR APPROVAL OF NEW 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. By decision GC02/21, the Commission approved Brent Wheeler and Carl Davidson to prepare a CIR for DCL’s renewal application.
3. As Mr Wheeler is no longer able to undertake the planned work required for the CIR, DCL has sought the Commission’s approval to appoint two new independent experts in his place.

## Legislation

4. 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**

5. 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**

6. DCL submitted, in summary, as follows:
- (a) By decision GC02/21, the Commission approved Brent Wheeler and Carl Davidson, pursuant to section 134(3) of the Act, to prepare DCL's CIR. The Commission determined that they are independent of DCL.
  - (b) For medical reasons, Mr Wheeler can no longer prepare the economic assessment section of the CIR. Mr Davidson remains available to prepare the social impact assessment.
  - (c) DCL seeks the Commission's approval to engage Simon Harris and Geoffrey Butcher to prepare the economic assessment section of the CIR. Mr Harris will be the main author, with Mr Butcher having a more limited role.
  - (d) It has provided the Commission with the following for each proposed expert:
    - (ii) a Statement of Independence;
    - (iii) an undertaking that he will comply with the Code of Conduct for Expert Witnesses set out in Schedule 4 of the High Court Rules;
    - (iv) a CV.
  - (e) It seeks the Commission's approval to engage Messrs Harris and Butcher, pursuant to section 134(3) of the Act.

## Analysis

7. In March 2021, the Commission approved Brent Wheeler and Carl Davidson to prepare the CIR to support DCL's application to renew its casino venue licence. DCL had intended Mr Wheeler to prepare the economic assessment section of the CIR and Mr Davidson to prepare the social assessment section. Mr Wheeler is no longer able to undertake his assigned work so DCL has sought the Commission's approval to appoint two new independent experts to prepare the economic assessment section of the CIR.
8. In previous decisions, the Commission has set out its approach to considering applications under section 134(3) of the Act and follows the same approach to this application.
9. The CIR, which is 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.
10. 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.
11. 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.
12. In decisions GC13/16 and GC02/21, 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.
13. In support of its submission that Messrs Harris and Butcher 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, either 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 or, 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; and

- (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).

14. The Commission considered the information provided and was satisfied that neither Mr Harris nor Mr Butcher have past or present relationships, associations or interests which would materially affect their views on the subject matter of the report. The Commission is familiar with Mr Butcher, having approved him under section 134(3) of Act as one of the authors of the CIR which accompanied an application to renew its casino venue licence by Christchurch Casinos Limited.

Matters Identified by the Commission and Research Specified

15. In decision GC02/21, the Commission identified two additional matters on which the CIR must report pursuant to section 134(3)(b) of the Act, and specified that research be undertaken in three areas pursuant to section 134(4) of the Act. The approved change in the authors of the CIR which must accompany DCL's renewal application does not affect those directions which remain despite the change.

**Decision of the Commission**

16. The Commission approved, pursuant to section 134(3) of the Act, Simon Harris and Geoffrey Butcher to prepare a CIR for DCL's application to renew its Venue Licence. Carl Davidson remains approved pursuant to Commission decision GC02/21.



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Lisa Hansen  
Chief Gambling Commissioner

for and on behalf of the  
Gambling Commission

15 July 2021

