

IN THE MATTER of the Gambling Act 2003

AND on an application by
QUEENSTOWN 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)
S C L Pearson
S Hughes KC
W A Acton
S T Shaw

Date of Application: 29 July 2022

Dates of Decision: 9 September 2022

Date of Notification
of Decision: 15 September 2022

**DECISION ON AN APPLICATION BY QUEENSTOWN 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. Queenstown Casinos Limited (“**QCL**”) 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**”). QCL’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 QCL.
2. QCL identified three people, Carl Davidson, Simon Harris and Geoff Butcher, as being suitable to prepare the CIR and sought approval from the Commission to engage them.

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 QCL

5. QCL submitted, in summary, as follows:
- (a) It wants to engage Carl Davidson, Simon Harris and Geoff Butcher to prepare the CIR to accompany its casino licence renewal application. Carl Davidson will undertake the social impact assessment. Simon Harris will lead the economic assessment, assisted by Geoff Butcher. It seeks the Commission's approval to engage Messrs Davidson, Harris and Butcher pursuant to section 134(3) of the Act.
 - (b) It 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.
 - (c) Pursuant to section 134(3)(b) of the Act, the CIR is required to report on matters identified by the Commission. Section 134(4) of the Act provides that the Commission may specify the research to be undertaken in preparing a CIR. It invites the Commission to indicate any particular matters which should be reported on in the CIR, and to specify any research to be undertaken.
 - (d) However, it is important to note that Queenstown Casino is smaller than both Dunedin and Christchurch Casinos in terms of the amount of gaming product. In addition, Queenstown's customer base is very different to that for Dunedin and Christchurch in that the vast majority of Queenstown's customers are not local and, when New Zealand's international borders are open, a large number of them will be from overseas.

- (e) In light of this, a randomised survey of the type and scale that the Commission asked to be undertaken for the Dunedin Casino CIR may not be appropriate for the Queenstown Casino. If undertaken, the small size of the latter means that the majority of survey participants will not be familiar with it, limiting the benefits of the survey.

Analysis

6. As the first step in submitting an application to renew its casino venue licence, QCL has submitted an application, pursuant to section 134(3) of the Act, for Carl Davidson, Simon Harris and Geoff Butcher to be approved as being independent of QCL. This is the third such application considered by the Commission, the previous applications being by Christchurch Casinos Limited (“**CCL**”) and Dunedin Casinos Limited (“**DCL**”), in relation to the renewal of their venue licences (see decisions GC13/16 and GC02/21 respectively).
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. Section 134(3)(a) accordingly requires the CIR to address 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 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. The Commission should be satisfied that the nominees will form and provide their own impartial views, free from the influence of the applicant and related interests. The Commission remains of the view that the approach set out in the two earlier decisions remains correct.
11. In support of its submission that Messrs Davidson, Harris and Butcher are independent of it, QCL 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 QCL, 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 QCL), 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 none of Messrs Davidson, Harris or Butcher have past or present relationships, associations or interests which would materially affect the impartiality which they would bring to their views on the subject matter of the report.

Matters identified by the Commission and specific research

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. Section 134(4) of the Act empowers the Commission to "specify the research to be undertaken in preparing" a CIR. This power enables the Commission to provide some direction regarding specific research to be undertaken. If nothing is specified, the research used for the CIR will be a matter for the impartial judgement of the authors. The directed research can relate to the essential subject matter, under section 134(3)(a) and any additional matters added, under section 134(3)(b).
15. When considering the first application to renew a casino venue licence (by CCL), 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 formed the view that it would have been assisted if it had addressed certain additional matters and the Commission had provided more guidance on the research.
16. When it considered the application for approval of independent CIR experts by DCL, the Commission directed that the CIR for Dunedin Casino must report on two additional matters, pursuant to section 134(3)(b) of the Act, namely, the amenities and facilities at the casino, and the level of support locally, regionally and nationally for the continued operation of the casino. Both matters are essential considerations under section 137(2).

17. Further, pursuant to section 134(4) of the Act, the Commission specified that certain information be gathered and analysed in preparing the CIR for Dunedin Casino; namely information on the casino facilities, the economic effects of the casino and the level of support for the renewal application. In addressing the level of support for the renewal application, the Commission directed that a randomised survey be undertaken with approximately 400 participants from each of the City of Dunedin, the Otago region and the remainder of New Zealand. The Commission has yet to receive DCL's renewal application or the CIR, but it expects that it will address each of these matters, as directed.
18. In the current application, QCL submitted that a randomised survey of the type and scale that the Commission required to be undertaken for the Dunedin Casino CIR may not be appropriate for the Queenstown Casino. QCL submitted that, as a consequence of the Casino's size and the fact that its customer base is not local, with many based overseas (during non-Covid times), the majority of survey participants would not be familiar with the Casino.
19. The Commission sought advice on QCL's submission from Professor Paul Delfabbro from the University of Adelaide. Professor Delfabbro had advised the Commission on matters for inclusion in the Dunedin Casino CIR, including the randomised survey about which QCL expressed concern.
20. Professor Delfabbro accepted what QCL said about the relative sizes of the two Casinos and the likely differences in the makeup of their clientele, but was of the view that the differences did not justify not undertaking a survey. While the data generated by a survey for Queenstown Casino would likely differ from those generated for the Dunedin Casino, the differences would not mean that the Queenstown data would have materially reduced value.
21. The Commission accepted Professor Delfabbro's advice. The survey is intended to assist the Commission's assessment of an essential consideration, namely the level of support for the application, which is not limited to those familiar with the casino which is the subject of the renewal application.
22. The Commission considers that it is likely to be assisted, in considering the renewal application for Queenstown Casino, by the same matters that it specified for the Dunedin Casino CIR, including the survey. It directs that the CIR for Queenstown Casino address the same matters that the Dunedin CIR was directed to address; namely:

Matters identified by section 134(3)(b) of the Act

- The amenities and facilities at the casino;
- The level of support locally, regionally and nationally for the continued operation of the casino.

Specific research pursuant to section 134(4) of the Act

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.

23. The Commission did not identify any further matters for inclusion in the CIR for the QCL renewal beyond those which appeared in the directions for the Dunedin CIR.

Decision of the Commission

24. The Commission approved, pursuant to section 134(3) of the Act, Carl Davidson, Simon Harris and Geoff Butcher to prepare a CIR for QCL's application to renew its Venue Licence.

25. 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 22 above.
26. The Commission specifies, pursuant to section 134(4) of the Act, that the CIR use the research information identified in paragraph 22 above in preparing the CIR.



Lisa Hansen
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

15 September 2022

