

IN THE MATTER of the Gambling Act 2003

AND of an appeal by **WAITARA TOWN & COUNTRY CLUB** against refusal to grant a Class 4 operator's 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 Appeal: 17 March 2020

Date of Decision: 7 August 2020

Date of Notification
of Decision: 31 August 2020

APPEAL BY WAITARA TOWN & COUNTRY CLUB AGAINST REFUSAL TO GRANT A CLASS 4 OPERATOR'S LICENCE

1. INTRODUCTION

- 1.1 Waitara Town & Country Club Inc ("the **Club**") appealed against a decision by the Secretary for Internal Affairs ("**Secretary**") refusing the Club's application for a class 4 operator's licence. Although the notice of appeal refers to s 77(1)(a) of the Gambling Act 2003 ("**Act**"), which relates to appeals against class 4 venue licence decisions, the adverse decision was to refuse a class 4 operator's licence. The reference to s 77 appears to be the consequence of an error in the Secretary's letter regarding advice of appeal rights. The relevant appeal right arises under s 61.
- 1.2 The application was declined because the Secretary was not satisfied that the Club's gambling operation is financially viable, pursuant to s 52(1)(c) of the Act. The Secretary was also not satisfied about the Club's suitability under s 52(1)(h), having regard to the Club's past non-compliance with the Act, pursuant to s 52(4)(c) of the Act.
- 1.3 The current appeal to the Gambling Commission ("**Commission**") turns on two matters:
- (a) The Commission's assessment of the financial viability of the Club's gambling operation (including whether this should be assessed on past information, future

expectation, or a combination of both) and whether that assessment extends only to the term of the prospective licence.

- (b) Whether the Commission is satisfied about the Club's suitability having regard to past non-compliance.

2. RELEVANT LEGISLATION

2.1 Section 52 of the Act relevantly provides, in relation to the grounds for granting a class 4 operator's licence:

- (1) The Secretary must refuse to grant a class 4 operator's licence unless the Secretary is satisfied that,—
- (a) the gambling to which the application relates is class 4 gambling; and
 - (b) the applicant's purpose in conducting class 4 gambling is to raise money for authorised purposes; and
 - (c) the applicant's proposed gambling operation is financially viable; and
 - (d) the applicant will maximise the net proceeds from the class 4 gambling and minimise the operating costs of that gambling; and
 - (e) the net proceeds from the class 4 gambling will be applied to or distributed for authorised purposes; and
 - (f) the applicant is able to comply with applicable regulatory requirements; and
 - (g) the applicant will minimise the risk of problem gambling; and
 - (h) any investigations carried out by the Secretary do not cause the Secretary not to be satisfied about the suitability of the applicant or any key person, in terms of subsection (4); and
 - (i) there are no factors that are likely to detract from achieving the purpose of this Act; and
 - (j) a key person is not a key person in relation to a class 4 venue licence held, or applied for, by the applicant (except in the case of a class 4 venue licence application, which was not or is not required under section 65(3) or (4) to be accompanied by a class 4 venue agreement).
- (2) In assessing financial viability under subsection (1)(c), the Secretary must consider, among other things, the ability of the applicant to reward winners and pay levies, taxes, and other costs, as well as apply or distribute the net proceeds from the class 4 gambling to or for authorised purposes.
- ...
- (4) In determining whether an applicant is suitable for a class 4 operator's licence, the Secretary may investigate and take into account the following things:
- ...
- (c) the profile of past compliance by the applicant and each key person with—
 - (i) this Act, minimum standards, game rules, Gazette notices, and licence conditions; and

- (ii) the Racing Act 2003 or the Racing Act 1971 (and any rules of racing made under either of those Acts); and
 - (iii) previous gaming Acts, and regulations made under previous gaming Acts; and
 - (iv) a licence or a site approval issued under a previous gaming Act; and
- (d) any other matter that the Secretary considers relevant.

2.2 Section 61 relevantly provides, in relation to appeals to the Commission regarding class 4 operator's licences:

- (1) A corporate society may appeal to the Gambling Commission against a decision of the Secretary to—
 - (a) refuse to grant a class 4 operator's licence to the corporate society; or
 - ...
- (3) The Gambling Commission—
 - (a) may request information from the corporate society or the Secretary; and
 - (b) is not bound to follow any formal procedure; and
 - (c) does not need to hold a hearing; and
 - (d) must consider any information provided by the corporate society or the Secretary.
- (4) The Gambling Commission may then—
 - (a) confirm, vary, or reverse the decision of the Secretary; or
 - (b) refer the matter back to the Secretary with directions to reconsider the decision.

3. BACKGROUND

3.1 On 7 November 2019, the Secretary received an application from the Club for a class 4 operator's licence, together with an associated application for a class 4 venue licence. The Club had previously held a licence which expired on 31 October 2019 but failed to apply to renew the licence in time to benefit from the automatic extension provided by s 56(6). As a result, its gaming operation ceased, with the gaming machines turned off, since 5 November 2019.

3.2 As part of its application, the Club provided the Department with Gaming Machine Account Forecast Summary figures, the Club's financial statements for the year ending 31 July 2019, and a letter of financial sign-off for those figures from its chartered accountants dated 18 November 2019. At the Secretary's request for further information, the Club's accountants advised that the Club had a debt to IRD, which the Club was negotiating to reduce and that the Club was arranging a loan to cover the IRD debt. Correspondence

provided to the Department included a letter dated 16 December 2019, in which the Club's accountants proposed that IRD write-off \$158,850.00 of the Club's \$228,850.00 debt, reducing the amount owed to only \$70,000.

3.3 On 23 January 2020, a statement of cashflows for the year ending July 2019 was provided as requested and, on 31 January 2020, the Club's accountants provided an email from "The Finance Lady" which indicated that, in response to the Club seeking a financier, an investor was possibly interested, subject to the more information being provided.

3.4 The Secretary declined the Club's application on 14 February 2020 (and again on 27 February 2020 in identical terms). The Secretary was not satisfied that the Club's gambling operation was financially viable:

- (a) The Club's gaming machine account forecast showed a forecasted 37.73% return on gross proceeds to authorised purpose, but the Secretary expected that gross proceeds would be less than projected in the 2020 year due to non-operation of the gaming machines, leading to lower net proceeds.¹
- (b) Even if IRD were to write off \$158,850.00 of the Club's debt and the Club secured a one year ANZ loan as planned, the Club would have to almost double its turnover to pay off the debt balance and interest in the upcoming year.
- (c) The Club's previous financial returns showed a consistent decline in revenues from 2015 across all three main income areas (restaurant, bar, class 4 gambling) and the Club's working capital has been negative for the last five years, deteriorating to -\$175,000 at 2018 year end. The Club's working capital against gross gaming machine proceeds was at -41% in the 2014 year and had also worsened to -110% in the 2018 year, meaning that the Club's liquidity risk had increased to the point that, at 2018 year end, it would take more than two years equivalent of gross proceeds to cover shortfall/outstanding debts even if all net proceeds were applied to the Club.
- (d) Working capital of the Club is forecasted at -\$119,000 as at 31 July 2020 – the Club holds \$34,000 worth of assets to cover \$153,000 debts due in the 2021 year.

3.5 The Secretary had little confidence in the Club's financial capacity to pay levies, taxes, and other costs as required under s 52(2) of the Act.

¹ Actually the DIA financial report and the table provided in the 14 February 2020 letter shows net proceeds of 38.8% of gross proceeds, with 38.48% applied to authorised purpose.

3.6 In reaching the decision to decline the Club's application, the Secretary was also not satisfied about the Club's suitability in the light of its history of past non-compliance with the Act. A routine audit by the Department of the Club on 23 October 2019 had showed that:

- (a) There were no trained staff members on duty for a period of time on a Friday night (in contravention of Regulation 12(1)(a) of the Gambling (Harm Prevention and Minimisation) Regulations 2004).
- (b) The venue was not completing exclusion forms for self-identified problem gamblers when requested by third parties (in contravention of s 310(1) of the Act).
- (c) The Club's gaming bank account had no supporting documents to confirm what each transaction was for and some were not able to be identified; authorised purpose payments and expenses were also not defined in the Club's documents (in contravention of Regulation 5 of the Gambling (Class 4 Net Proceeds) Regulations 2004).
- (d) There was no clear structure or process for executive decisions regarding gaming machine operations and no set proceeds committee (in contravention of regulation 8 of the Gambling (Class 4 Net Proceeds) Regulations 2004).

4. CLUB'S SUBMISSIONS

4.1 The Club appealed the Secretary's decision on 17 March 2020 and filed submissions on 5 June 2020. Its case, in summary, is as follows:

- (a) By far the largest part of the Club's authorised purpose payments are made towards the maintenance, upkeep and general administrative costs of the Club and the Club will find it very difficult to remain viable without the gaming machine income.
- (b) In 2016, the Club's long-time manager became ill and died at the end of that year. Since then, the Club has made larger cash losses.
- (c) The Club's focus has been on repaying bank debt so that the Club can own its West Quay premises debt free. Bank lending has been replaced, in part, by member loans and, as at 31 July 2019, the Club had two private member loans totalling \$78,980. The Club has also raised funds from members via the issue of debt securities, with \$40,000 raised (these loans being for a 2 year term at 4%

pa interest). While the funds advanced by members are formally in the form of debt, the Club's expectation is that at least some of the contributors will treat them as equity and be comfortable to leave the money with the Club for the foreseeable future.

- (d) Over the last three years or so, the Club has fallen behind in meeting its PAYE, GST and Gaming Duty obligations and, as at 4 June 2020, owes \$279,598.07 to IRD (of which \$56,399 is Gaming Machine Duty debt). The Club has been advised by IRD that it would likely remit all bar \$70,000 of the debt but awaits formal notification. A Club member had indicated that he or she may be prepared to advance sufficient funds as a loan to clear the reduced IRD tax bill.
- (e) IRD remissions of part of the Club's tax debt would reduce the Club's current liabilities, as at 31 July 2019, from \$253,507 to around \$90,000, and increase non-current liabilities from \$38,980 to around \$170,000.
- (f) The Club will make a significant loss in the year to 31 July 2020 owing to loss of gaming machine revenue and the effects of the Covid-19 lockdown, but it has taken steps to increase revenue and decrease costs, including engaging a new manager with an IRD background, reducing opening hours, and engaging a new chef at the Club's restaurant. The Club is confident that, with gaming machine revenue, overall revenue could increase so that it can at least break even on a cash basis.
- (g) Assuming that IRD reduces the Club's tax liability to \$70,000, that Club members advance funds to clear that debt, that recent revenue and costs trends are maintained, and that revenue improves when Covid-19 alert level goes to level 1, the Club would be financially viable if granted a new class 4 licence. As the capital injected into the Club to repay IRD debt and to provide working capital is not current debt, the Club will not need to increase sales by anything like the amount estimated by the Secretary – to fund current year costs in the year to 31 July 2021, the Club would just need to fund the interest costs on that lending, somewhere in the order of an additional \$6,000 pa.
- (h) For the purposes of a class 4 licence application "financial viability" should be assessed primarily by reference to the term of the licence and not to the long term viability of the Club. While the Club's past performance is relevant to the assessment, the application should be assessed based on reasonable forecast future performance.

- (i) The Club acknowledged past issues of non-compliance with the Act. To rectify those issues and to avoid future non-compliance, the Club has engaged a new manager, Mr King, who will ensure that written policies are in place and followed, and that regular compliance monitoring, adequate training of staff, and upskilling of the Committee takes place.
- (j) The Club's future will be in jeopardy if it is unable to re-obtain a class 4 operator's licence. It would be unfortunate if a Club with a 67 year history had to close in these circumstances.

5. SECRETARY'S SUBMISSIONS

5.1 In response, the Secretary submitted, in summary as follows:

- (a) The Club's case is based on what *may* happen rather than what it can actually deliver on, at the present time. While it does appear that IRD is willing to remit part of the Club's tax debt, the terms have not been provided, including the instalment repayment arrangement, and the Club will be reliant on members to advance sufficient funds without identifying who, how much, and what terms and conditions attach to such advances. There is also no supporting evidence to show the detail of what the new manager proposes to do to address past non-compliance issues.
- (b) The Secretary relies on the results of its earlier investigation and assessment of the Club's books (which was assisted by the Department's forensic accountants). That assessment was completed on the assumption that the Club's IRD debt would be reduced to \$70,000.
- (c) Assuming that IRD reduces the Club's debt to \$70,000 and sufficient members donate or advance long-term loans, the Club's working capital *may* be in an improved position overall. However, this is only one aspect of a financial viability assessment. The other relates to the Club's operating performance. As the Club conceded, it has consistently been unable to generate sufficient revenue to meet its expenses. Its profitability has deteriorated in the last 3-4 years and the ongoing trading losses come on top of the Club's substantial debts.
- (d) The best and most accurate assessment of financial viability that accountants can give is one based on past results and not "unknowns or maybes." While it is easy for the Club to say that it will increase its revenue by introducing a number of measures like increasing membership, hiring a new chef and manager etc, these are not substantiated, and all would come at additional cost to the Club.

- (e) The Secretary is concerned that, in replacing bank loans with possible loans and advances from members (the terms of which are not finalised), the Club would be repairing one hole, only to find other holes in its operations. The Secretary also queries where the monies for the instalments and the lump sum to repay IRD will come from, pointing to the fact that nothing appears to have come of obtaining a financier through “The Finance Lady”, and that even an IRD partial tax debt write-off, cash loans and advances would only provide a temporary fix for the Club’s financial issues.
- (f) The Secretary has little confidence that the Club can pay levies, taxes and other costs as required under s 52(2) given its current (and likely) financial state. Aside from the inability to generate sufficient revenue to meet its expenses in the past 3-4 years, there are too many unknown matters and assumptions with what the Club has proposed.
- (g) The Club’s non-compliance with the Act and related regulations should not be downplayed – both the financial and operational issues share equal importance when it comes to running a successful gaming operation and the failures relate to basic requirements for any gaming operator. Beyond indicating that a new manager, Mr King, has been hired to resolve operational issues and noting that he has a background with IRD and extensive experience in management and compliance, no further detail has been provided by the Club. The Secretary is unable to assess whether Mr King is a suitable person as required under the Act or to determine whether he will exercise a significant influence in his role.

6. CLUB’S REPLY SUBMISSIONS

6.1 In its 14 July 2020 reply submissions, the Club submitted that, since its 5 June 2020 submissions, the Club had taken further concrete steps to improve its working capital position:

- (a) The Club had reached agreement with IRD on a partial tax write-off of its tax debt save for \$80,000, with \$40,000 to be paid as a lump sum on 31 July 2020 and the balance by 6 monthly instalments of \$1,000 from 25 August 2020 followed by monthly instalments of \$3,000 from 25 February 2021 over approximately 12 months.
- (b) The Club had sourced funding from seven of its members by way of subscriptions for debt securities in the Club for a total of \$70,000, with interest payable annually at 4% and repayable on the second anniversary of advance.

Of the monies advanced to date, \$40,000 has been used to clear other accounts payable, leaving \$30,000 to contribute to the IRD lump sum repayment. A member has offered to fund shortfall in the initial IRD repayment lump sum.

- (c) The Club has varied loan agreements with existing member loans (totalling \$78,930) to push repayment out to 31 July 2023.
- 6.2 The Club submits that the net effect of these steps is that its working capital deficit has improved from \$212,478 in the Club's 2019 financial statements with a 2020 forecast of \$119,000, to an estimated current position of \$36,686 (where \$30,000 of this booked liability relates to a wage subsidy extension that the Club will not need to repay), meaning that it will not have to increase its profit by \$74,200 as forecast by the Department. In addressing its working capital position, the Club has brought itself time to address its operating performance issues and has funding in place to operate safely and viably for the next two years.
- 6.3 As to operating performance, the Club has not been able to implement the kinds of improvements earlier outlined in its 5 June 2020 submissions and has been affected by the Covid-19 lockdown. However, trading performance for June 2020 (from restaurant and bar sales) was \$37,000, compared with \$35,000 and \$22,000 for the same month in 2019 and 2018 respectively.
- 6.4 As to non-compliance issues, the Club attached an affidavit from the new manager, Mr King, to confirm his experience and suitability for the role. This affidavit confirmed that Mr King had previously been employed by IRD for 30 years (including time in technical tax roles and as Team Leader of the New Plymouth Investigations Team, where he oversaw tax compliance investigations). The Club submits that Mr King is an ideal person to manage the Club both to achieve its business performance objectives, as well as to ensure its compliance with all statutory obligations and points to his recent work in finalising settlement with the IRD and arranging member financing. Mr King's affidavit confirms that he is not disqualified by any of the matters set out in s 52(4)(a) as a "key person".
- 6.5 Subsequent to the Club's 14 July 2020 submissions, it filed a further affidavit of Mr King, sworn 29 July 2020, in which Mr King deposed that the Club has now received a total of \$125,000 from its members in debt security submissions, that it has made the initial payment to IRD of \$40,000 on 27 July 2020, and that, with existing debt security subscriptions, it is able to clear the remaining IRD debt.

7. ANALYSIS

- 7.1 The appeal function that the Commission exercises under s 61 is by way of reconsideration on a *de novo* basis,² meaning that the Commission must consider matters afresh, using any updated information before it and applying s 52 as if it were the Secretary, including deciding whether it must refuse to grant the licence to the Club because of the matters set out in that section.
- 7.2 Section 52(1) provides that the Secretary (and the Commission on appeal) must refuse to grant a class 4 operator's licence if the Secretary (or the Commission) is not satisfied about any of the matters specified in s 52(1). The word "satisfied" does not mean satisfied beyond reasonable doubt – it simply means that the decision-maker has made up its mind.³
- 7.3 In Decision GC19/09, in considering an appeal against a decision to renew a licence 4 operator's licence where the Secretary had not been satisfied that the appellant Trust's gambling operations were financially viable, the Commission held that it considered that *"the starting point of its analysis should be the primacy to be accorded to the legal requirement for distribution for authorised purposes"*.⁴
- 7.4 The Club's 7 November 2019 application for a new class 4 operator's licence is made on "Category A" basis (i.e.: it is *"a club that intends to operate gambling equipment at a non-commercial class 4 venue that the club owns or leases and is mainly for the use of club members..."*). The Club's "authorised purposes statement" sets out five purposes:
- (a) Donations to recognised charitable organisations such as Plunket or Red Cross, and to amateur sporting and bona fide youth organisations within the local community to further the objectives of those groups. No donations and/or payments to professional sportspeople.
 - (b) To assist in maintaining the Club as a community facility. Funds for building extensions, renovations or construction of new premises and mortgage repayments. Excludes bar areas.
 - (c) Provision and upkeep of grounds, plants, machinery and leisure equipment.

² E.g., Decision GC43/06 at paragraph 14.

³ Decision GC43/06 at paragraph 16.

⁴ At paragraph 10.

- (d) Assist sporting adjuncts within the Club through provision of uniforms, equipment, premises and actual and reasonable expenses to travel to and compete in tournaments with kindred groups.
- (e) Payment of overhead expenses, including but not limited to accounting fees, audit fees, cleaning, gas, insurance, fire alarm monitoring, freight and postage, legal fees, power, rates, rents, security, SKY TV, stationery and telecommunications.
- 7.5 On the Club's stated authorised purposes and past practice, if the application for a class 4 licence were granted, the Club would not be a licence holder "*that mainly or wholly distributes net proceeds to the community*" per regulation 9 of Gambling (Class 4 Net Proceeds) Regulations 2004 ("**Regulations**"). Because the Club is primarily an applying rather than a distributing entity, regulations such as regulation 10, relating to minimum amounts for allocation to authorised purposes, do not apply to the Club.
- 7.6 That said, the application or distribution of net proceeds from gambling for authorised purposes is at the heart of the definition of, and justification for, class 4 gambling (s 30) and, in considering whether or not to grant a class 4 licence, the Secretary must consider whether he is satisfied of certain factors, including that the applicant's purpose in conducting class 4 gambling is to raise money for authorised purposes (s 52(1)(b)); that the applicant will maximise the net proceeds from the class 4 gambling and minimise the operating cost of that gambling (s 52(1)(d)); and that the net proceeds from the class 4 gambling will be applied to or distributed for authorised purposes (s52(1)(e)).
- 7.7 In their respective submissions on the financial viability of the Club's gambling operations, both the Club and the Secretary address the overall financial viability of the Club. In the particular circumstances, the Commission considers this to be the correct approach. While s 52(1)(c) requires satisfaction that the applicant's proposed *gambling operation* is viable, because the authorised purpose for applying net proceeds is the provision of financial assistance to the ongoing and future operation of the Club, financial viability should include consideration of the financial viability of the Club itself. The adequacy of the return from the gambling operation to sustain the Club financially is in practice the equivalent of the minimum distribution targets in the Regulations.
- 7.8 The Club and the Secretary differ primarily on the appropriate period over which to assess financial viability. The Club considers that financial viability should primarily be assessed by reference to the term of the licence (and not to the Club's long term viability) and be based on reasonable forecast future performance. The Secretary, in contrast, considers that financial viability should both adopt a longer term perspective (which includes, for

example, its likely financial position at the end of the licence period) and be informed more by past results than future “unknowns or maybes”.

- 7.9 The Commission has previously addressed this issue. In GC43/06, which concerned an appeal against a refusal to renew a class 4 venue licence, the Commission held:⁵

[17] The Commission considered its role to be forward looking in determining whether to renew the licence. The language of subsection 72(1)(c) clearly indicates that its concern is whether the applicant will comply in future with various regulatory requirements. Equally, the Commission has interpreted subsection 5(b) to apply to future compliance with section 67.

[18] When assessing whether there will be future compliance, it is, however, logically relevant to consider past compliance and behaviour. Applicants with a history of non-compliance are less likely to comply in the future, while there may be no reason to question future compliance by applicants with an exemplary history.

...

[20] The manner in which proposals for future change are presented will also be important, a thorough and well-particularised proposal, supported by affidavit evidence, being more persuasive for reasons of certainty, than a vague and unsupported proposal.

- 7.10 Accordingly, the application (in relation to both financial viability and compliance issues) is to be assessed prospectively, but logically informed by both the past and present circumstances.

Financial viability assessment

- 7.11 The Commission is being asked to accept the Club’s argument that its gambling operations will be financially viable because its working capital deficit is now a more manageable \$6,686 (with repayment date of the various Club member loans pushed back to 2023) such that it can address operating performance issues and increase revenue, to at least break even on a cash basis, if it also had gaming machine revenue.
- 7.12 The Commission is not satisfied about the Club’s financial viability on the present application, which it sees as being inadequate and insufficiently supported.
- 7.13 In an application of this nature, the Commission would expect to see robust forecast figures and a solid business plan to reverse the historical decline in the business, but the information provided lacks the requisite substance. The Commission is not satisfied that the Club’s current operations are sustainable, noting that its position has gradually worsened since 2011. It is clear that a substantial increase in revenue is required to ensure the Club’s financial viability, but little indication has been given to the Commission as to how such an increase is likely to be achieved. As presented, the Commission has no reason to conclude that the Club’s financial situation will change. While the new

⁵ Decision GC43/06. Paragraphs 17 and 18 were subsequently cited in Decision GC19/09 at paragraph 9.

manager appears to be well qualified in the area of compliance, there is nothing to indicate that he is likely to bring the revenue focus needed.

- 7.14 Further, the Commission does not consider that the assessment of financial viability should be limited strictly to the term of the prospective licence, as the Club's submissions appear to suggest. While the Act's text does not make express whether the financial viability assessment is limited to the term of the licence applied for, or a longer perspective, the Commission considers that the former to be an unduly narrow reading in light of the underlying purpose of the ground in this case (namely, to produce sufficient net proceeds to sustain the Club financially). In that sense, the Club's refinancing of its debts by short term member loans appears to be merely a temporary fix of immediate financial problems, leaving long term viability concerns unaddressed. The Commission also notes that those members willing to provide financial support to the Club are doing so with debt, and not equity, reflecting an apparent lack of faith in the financial future of the Club.

Non-compliance assessment

- 7.15 Although not directly applicable to this appeal, the Commission's GC10/14 decision (regarding an appeal by Bluegrass Holdings Limited against a decision of the Secretary to cancel its class 4 operator's licence) contains a statement regarding the relationship between satisfaction under s 52(1)(h) and profile of past compliance. The Commission said:

[56] Whether the grounds in section 52 are still met involves satisfaction about a present and future state of affairs, albeit informed by past events. As a result, the primary issue is whether there is present satisfaction about the suitability of the Applicant and its key persons, which, in turn, makes relevant the profile of past compliance.

- 7.16 The Club's case is essentially that the new manager, Mr King, will act as a circuit breaker of the acknowledged past history of non-compliance, which came about because of the illness and death of the Club's previous long term manager in 2016. The Club has now provided further information on Mr King's relevant experience in its submissions and accompanying affidavit.
- 7.17 However, the Commission is not satisfied that the impact of past non-compliance on suitability has been adequately addressed. While it is commendable that the Club has taken steps to hire a new manager with a background suggesting considerable experience in matters of regulatory compliance, the role of the past and current members of the Club's governance structure (in the absence of a manager) in past instances of non-compliance has not been addressed at all.

7.18 The Commission considers that the Club needs to provide greater detail about the causes of its past non-compliance and the steps that the Club has taken and proposes to take to address those causes in the future so that the Commission is confident that future compliance will be assured.

8. DECISION

8.1 As the Commission is not satisfied, in the information before it, that the Club's gambling operation is financially viable, pursuant to s 52(1)(c) of the Act, or of the Club's suitability under s 52(1)(h), having regard to the Club's past non-compliance with the Act, pursuant to s 52(4)(c) of the Act, it confirms the Secretary's refusal to grant a Class 4 operator's licence to the Club.

8.2 The Commission's decision does not preclude the possibility that a new, and better supported, application by the Club, would succeed in the future.



Lisa Hansen
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

31 August 2020

