



**DECISION AND REASONS FOR DECISION**

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by Bentleigh RSL Sub-branch Inc for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises the Bentleigh RSL, 538-540 Centre Road, Bentleigh from 75 to 90 gaming machines.

**Commission**

Mr Bruce Thompson, Chairman

Mr Robert Kerr, Commissioner

**Appearances**

Ms Louise Hicks of Counsel for the Applicant  
(instructed by Williams Winter Solicitors)

Mr Bronte Campbell as Counsel Assisting the  
Commission

**Date of Hearing**

20 June 2013

**Date of Decision**

18 July 2013

**Decision**

That the application be granted.

**Signed**

**Mr Bruce Thompson**

Chairman



## REASONS FOR DECISION

### INTRODUCTION

1. This is an Application to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) by Bentleigh RSL Sub-branch Inc (**Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Bentleigh RSL, 538-540 Centre Rd, Bentleigh (**the RSL**), from 75 to 90.
2. The relevant municipal authority is the City of Glen Eira (**Council**). On 15 May 2013, Council informed the Commission that it did not wish to make a submission in respect of the Application.

### THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (**the Act**). The Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and some members of some communities.<sup>1</sup> For this reason the Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some and harm for others. In particular, the balance is maintained by requiring an applicant who wishes to increase the number of EGMs at a venue to satisfy the Commission of the "no net detriment test" and the other matters set out in section 3.4.20(1) of the Act.<sup>2</sup>
4. The no net detriment test requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.<sup>3</sup>

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<sup>1</sup> See: s 1.1(2) of the Act.

<sup>2</sup> See: *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [247] (Bell J).

<sup>3</sup> *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, 435 (**Romsey**).



- Further, section 3.4.19 of the Act allows the Council to make a submission addressing the economic and social impact of the proposal on the wellbeing of the community and taking into account the impact of the proposal on surrounding municipal districts. The Commission is bound to take this submission into consideration when applying the no net detriment test. This recognises the special role of local government in representing the people of a community.<sup>4</sup>

## THE CITY OF GLEN EIRA AND THE BENTLEIGH RSL

- The City of Glen Eira (**Glen Eira**) is a metropolitan Local Government Area (**LGA**) located approximately 15 kilometres south-east of Melbourne and includes the major regional centres of Bentleigh, Bentleigh East, and Caulfield. Glen Eira occupies two Statistical Local Areas<sup>5</sup> (**SLAs**), Glen Eira (Caulfield) and Glen Eira (South).
- Glen Eira is subject to a regional cap of 1061 EGMs<sup>6</sup>. Currently there are twelve gaming venues in the municipality operating a total of 774 EGMs. The RSL is one of five venues approved for gaming within the Glen Eira (South) SLA. If this application is to be granted, an additional 15 EGMs at the RSL will increase the number of EGMs operating in Glen Eira up to 789.
- Glen Eira currently has an average of 6.58 EGMs per 1,000 adults which is 17% more than the metropolitan average and 12% more than the State average. Expenditure on EGMs in Glen Eira for the 2011-12 financial year was approximately \$74.3m, which equates to an average expenditure per adult of \$669, which is 5% more than the metropolitan average and 11% more than the State average. Gaming expenditure in Glen Eira has decreased by 15.94% in real terms over the last five years, compared to a 16.83% decrease in metropolitan Victoria over the same period.
- The Glen Eira (South) SLA is ranked 23<sup>rd</sup> out of the 79 metropolitan SLAs on the SEIFA scale for disadvantage,<sup>7</sup> indicating that the SLA in which the RSL is located does not show significant signs of disadvantage.

<sup>4</sup> *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [247] – [249].

<sup>5</sup> The Statistical Local Area (SLA) is an Australian Standard Geographical Classification (ASGC) defined area which consists of one or more Collection Districts (CDs). SLAs are Local Government Areas (LGAs), or parts thereof. Where there is no incorporated body of local government, SLAs are defined to cover the unincorporated areas. SLAs cover, in aggregate, the whole of Australia without gaps or overlaps.

<sup>6</sup> Pursuant to section 3.4A.5(3A)(b) of the Gambling Regulation Act 2003 the Victorian Commission for Gambling and Liquor Regulation determined, in accordance with the criteria specified in the Minister for Gaming's Order on 15 August 2012, the maximum permissible number of gaming machine entitlements under which gaming may be conducted in each region.

<sup>7</sup> Socio-Economic Indexes for Areas (**SEIFA**) is a product developed by the ABS to assist in the assessment of the welfare of Australian communities. The SEIFA Index allows the ranking of regions/areas, providing a method of determining the level of social and economic well-being in each region.



10. When broken down into a Census Collection District level, 95% of collection districts within a 2.5km radius of the RSL are in the third, fourth and fifth quintiles of disadvantage, indicating that the area immediately surrounding the RSL exhibits little signs of disadvantage.

## THE MATERIAL BEFORE THE COMMISSION

### Applicant submissions

11. The Applicant provided the Commission with material to establish the economic and social benefits that approval of the application would bring to the municipality:
- a) Socio-Economic Impact Report, prepared by Mr Nick Anderson of NBA Group Pty Ltd, dated 4 February 2013 (**the February NBA Report**);
  - b) Addendum to the Socio-Economic Impact report, prepared by Mr Nick Anderson of NBA Group Pty Ltd, dated 17 June 2013 (**the June NBA Report** and collectively with the January NBA Report, **the NBA Reports**) incorporating SEIFA data from the 2011 census ;
  - c) Gaming Expenditure Estimate Report prepared by Mr Michael Clyne (**the Clyne Report**);
  - d) Witness Statement of Ian Kenneth Butcher, President of the Bentleigh RSL, dated 21 March 2013;
  - e) Witness Statement of Glenn Ashley Sanders, Manager and Nominee at the Bentleigh RSL, dated 21 March 2013;
  - f) Second Witness Statement of Glenn Ashley Sanders, Manager and Nominee at the Bentleigh RSL, dated 14 June 2013; and
  - g) Witness Statement of Sylvia Lindsay, Welfare Coordinator at the Bentleigh RSL, dated 21 March 2013.

### **Mr Nick Anderson**

12. The Applicant engaged Nick Anderson, a Director of NBA Group Pty Ltd (**NBA**), to prepare a social and economic impact statement to accompany the Application. Mr Anderson gave evidence at the hearing of the application and was cross-examined. The Commission accepts that Mr Anderson is qualified to give an informed opinion on the likely social and economic impacts of EGMs.



13. In terms of the social and economic profile of Glen Eira, Mr Anderson told the Commission that Glen Eira is a relatively affluent municipality, exhibiting little signs of disadvantage. Mr Anderson noted that Glen Eira is the sixth most advantaged LGA in Victoria based on an analysis of 2011 SEIFA data.
14. As part of NBA's assessment of social and economic impacts of the proposal, a patron survey of the RSL's gaming room was undertaken. The results of the survey show that the majority of RSL patrons are drawn from suburbs within a 2.5 km radius of the RSL. Mr Anderson told the Commission that the results of the survey matched the membership of the RSL, with the majority of the RSL's members being residents of Bentleigh and Bentleigh East. Mr Anderson noted that these areas are amongst the top 10 per cent most advantaged suburbs within Victoria.<sup>8</sup>
15. Mr Anderson gave evidence that the RSL currently has 557 service members, 980 affiliate members, 725 social members and 436 community members. The RSL provides a range of entertainment activities and facilities available to members and visitors to the RSL as well as subsidised meals. The venue consists of:
  - A grand entrance and reception area, permanently manned by at least one staff member;
  - 160 seat bistro with terraced meal area and children's play facility;
  - Lounge area;
  - Sports and members bar including alfresco area;
  - Large meeting room, available for hire free of charge to local not-for-profit community groups;
  - Upstairs function room which caters for up to 80 patrons; and
  - Gaming room with 75 EGMs.
16. Mr Anderson told the Commission that revenue derived from gaming is used to assist the RSL in its charity and welfare services and provide support to local community and sporting organisations. Mr Anderson gave evidence that an increase in gaming revenue from an additional 15 EGMs at the venue will be used by the RSL to:

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<sup>8</sup> Based on an analysis of 2011 SEIFA data.



- Offer additional services to members, including discount membership, activities and meal options, which would be improved to service a broader group and larger number of members;
- Improve the RSL's welfare program, which offers a range of services and resources, including –
  - Health advice and support to members and their families;
  - Exercise, friendship and social clubs to improve the physical and mental health of members;
  - Library service, which is operated by volunteers and relies on the donation of resources for the ongoing success and operation of the service;
  - Key safe and smoke detector program to improve the safety of members over the age of 80.
- Conduct additional works at the venue to strengthen and improve the role that the venue plays within the community. These works include installation of a kitchen on the first floor of the venue, refurbishment of the upstairs function room, and development of additional meeting and function rooms;
- Increase employment at the RSL, including –
  - the creation of two full-time Welfare Officer positions to assist in providing support and outreach programs to the community. Despite the significant cost (approximately \$80,000 per annum), the enhancement of these services will bring significant benefit to the broader community, particularly veterans and their families;
  - the creation of six additional hospitality positions – full time and permanent part time – to provide table service in the bistro area of the venue.

17. Mr Anderson gave evidence that the RSL currently provides a large level of support to local community and sporting groups on an annual basis. Some examples of the support provided by the RSL to local sporting and community groups in the last 12 months include:

- Sponsorship of various sporting clubs (athletics, basketball and baseball) in Moorabbin, McKinnon and Cheltenham that equate to approximately \$20,000;



- Cash and in-kind contributions to the Bentleigh Football Club and Bentleigh Junior Football Club totalling approximately \$11,000;
- On-going sponsorship of the Bentleigh Cricket Club ensuring that the Club has good quality equipment and facilities. This sponsorship amounts to approximately \$8,500 in cash and in-kind contributions from the RSL;
- Providing financial support Oakleigh Army Cadets (necessary due to the cessation of government funding) totalling approximately \$9,000;
- Contributions totalling \$3,000 to McKinnon and Bentleigh Secondary Colleges to upgrade and maintain musical instruments and equipment; and
- Contributions to other community groups including the Salvation Army, Peter MacCallum Cancer Centre, Oakleigh SES, as well schools, kindergartens and sporting clubs throughout the municipality. These contributions total approximately \$8,500.

Mr Anderson told the Commission that the RSL was committed to increasing its current community contributions by \$20,000 per annum, should this application be approved.

18. Mr Anderson told the Commission that the RSL has a memorandum of understanding with Gamblers Help Southern which aims to promote, encourage and enhance best practice responsible gambling initiatives at the Bentleigh RSL. Mr Anderson told the Commission that the RSL has a strong working relationship with Gamblers Help Southern and the two parties strive to design and implement initiatives which will minimise the incidence of problem gambling at the venue. According to Mr Anderson, Gamblers Help Southern considers the RSL to be a hallmark venue in terms of responsible service of gaming and often uses the RSL as a demonstration venue to other gaming operators as to what is considered best practice within the industry. Mr Anderson told the Commission that Gamblers Help did not consider the Bentleigh RSL to have concerns relating to problem gambling at the venue.
19. In terms of the disbenefits that are associated with the application, Mr Anderson noted that, as with all applications that increase accessibility to gaming, the key concern is a risk of an increase in problem gambling. In Mr Anderson's opinion, approval of this application is unlikely to increase the rate of problem gambling within the City of Glen Eira as:
  - There is already access to EGMs within the municipality;



- 15 additional EGMs will only have an impact when there is peak utilisation of the EGMs currently operating at the venue, which is infrequent;
- Gaming is one component of a larger food and entertainment offering at the Hotel;
- The anticipated increase in EGMs within the municipality is very modest and is unlikely to have a material impact on expenditure derived from problem gambling, especially considering the particularly low level of disadvantage that is evident in the municipality;
- The venue operator takes its responsible service of gaming obligations very seriously, has industry leading policies and procedures and is committed to minimising harm associated with problem gambling in its venue.

20. In Mr Anderson's opinion, approval of this application would result in a net positive social and economic impact on the community.

***Mr Michael Clyne***

21. The Applicant engaged Mr Michael Clyne to provide an estimate of the expenditure that would be generated by an additional 15 EGMs at the Premises. Mr Clyne is an independent gaming expenditure consultant who has appeared before the Commission to give evidence on many occasions.
22. Mr Clyne told the Commission that, based on an assessment of the current performance of EGMs in the venue and a comparison with other similar gaming venues in Victoria, he estimated that an additional 15 EGMs at the RSL would generate expenditure of between \$244,792 and \$489,585 in the first 12 months of operation.
23. Mr Clyne estimated that approximately 80% of this expenditure would be transferred from other gaming venues within the municipality. Accordingly, expenditure that would be new to the municipality as a result of operation of an additional 15 EGMs at the RSL could be expected to be between \$48,958 and \$97,917. This would represent an increase in expenditure within the municipality of approximately 0.07% and 0.13%.
24. Mr Clyne told the Commission that the RSL's current EGM utilisation figures suggested that there was little to no demand for an increase in EGMs at the venue and it was likely that expenditure would be at the lower end of the range provided. Mr Clyne noted that it was conceivable that the additional EGMs would not increase expenditure at the venue at all,





such is the lack of demand. However, Mr Clyne told the Commission that his estimate provided the Commission with a conservative estimate that reflected the performance of other similar gaming venues with large numbers of EGMs.

25. The Commission accepts Mr Clyne's estimate as a reasonable approximation, sufficient to inform its decision, noting that the anticipated increase in expenditure within the municipality is nominal.

***Mr Ian Butcher***

26. Mr Butcher provided the Commission with a witness statement and gave evidence at the hearing of the application. Mr Butcher has considerable experience with the RSL after retirement from service, and has been in his current role as President of the Bentleigh RSL for approximately four years.
27. Mr Butcher told the Commission that the RSL operates for the benefit of maintaining the welfare of veterans, widows and dependents. The raising of revenue is primarily for the benefit of ensuring the ongoing support and care for veterans and families.
28. According to Mr Butcher, the RSL is aiming to expand the business to allow for future renovations, as well as providing a diverse venue for patrons. Mr Butcher gave evidence that increasing the number of EGMs at the venue will enable greater choice of EGMs to patrons and add extra capacity for when the gaming room is operating at its peak.
29. Mr Butcher accepted the statistical conclusions reached by the expert reports, which indicated that peak utilisation occurred three times in total during a two week sample period. Nonetheless, Mr Butcher opined that the gaming area generally has a good level of patronage, with usage at the machines often fluctuating quite drastically, as well as some patrons "co-playing", whereby two or more patrons use the same machine.
30. Mr Butcher outlined the commitment that the Hotel has to the community, and confirmed that should the Application be approved, the Hotel will increase its current cash contributions to community and sporting groups by \$20,000 per annum.

***Mr Glenn Sanders***

31. Mr Sanders is the General Manager of the Bentleigh RSL and held this position for approximately two years. Mr Sanders provided the Commission with a witness statement and supplementary witness statement and gave evidence at the hearing of the application.



32. Mr Sanders told the Commission that the RSL purchased an additional 15 EGM entitlements at the 2010 Pre-Action Club Offer of gaming entitlements. The RSL had not initially set out to purchase additional entitlements, however was able to purchase the entitlements at low cost and considered that additional EGMs would diversify the gaming operation at the venue.
33. Mr Sanders confirmed to the Commission that the revenue generated by the additional EGMs will be used to enhance the services and facilities offered to members, which include veterans and widows, as well as increasing the RSL's contributions to community beneficiaries by \$20,000 per annum.
34. Mr Sanders told the Commission that the RSL enjoys a close and productive working relationship with Gamblers Help Southern and its venue support worker, Mr Gareth Hanson. According to Mr Sanders, the RSL takes a considerable amount of pride in being a demonstration venue for Gamblers Help Southern and is constantly looking at ways to improve its responsible service of gambling practice and minimise problem gambling related harm.
35. Mr Sanders confirmed that, should this application be approved, the RSL will create two full-time Welfare Officer positions to assist in providing support and outreach programs to the community and also convert the part-time Welfare Coordinator role into a full-time position.

***Ms Sylvia Lindsay***

36. Ms Lindsay is the Welfare Coordinator at the Bentleigh RSL. She has held this position for approximately five years. Ms Lindsay gave further oral evidence and provided the Commission with a witness statement.
37. Ms Lindsay outlined the extensive in-house services offered at the RSL, as well as her personal experience in operating these programs with other staff members, often on a volunteer basis.
38. Ms Lindsay outlined the increasing need for services and programs as other RSLs in the other downsize and demand increases at the Bentleigh RSL branch. The current hours of operation of the welfare services are not sufficient, in the view of Ms Lindsay, with the increase of revenue as a result of additional EGMs being a way to increase staffing, services and facilities at the RSL.
39. Ms Lindsay reiterated the commitment that the RSL has to provide facilities, programs and services to the community, and in particular, veterans and widows.



40. Ms Lindsay told the Commission that she, together with her volunteer support workers, had first-hand contact with some of the municipality's most vulnerable residents and was not aware of any incidents of problem gambling vulnerability or harm.

#### **LIKELY ECONOMIC IMPACT OF APPROVAL**

41. There is often a large degree of overlap between economic and social impacts of applications to operate EGMs. The Commission considers it useful for the purpose of balancing community benefits and detriments that a thorough analysis and identification of the economic and social impact on the community be undertaken.
42. The Commission accepts that approval of this Application will result in an increase in gaming expenditure at the RSL of between \$244,792 and \$489,585 in the first 12 months of operation.
43. On all of the material presented to it, the Commission considers that a substantial portion of the additional expenditure to be derived from the additional EGMs will be transferred from other venues. However, the Commission notes that it is never possible to quantify with absolute certainty the exact amount of revenue that would be drawn from other venues.
44. In respect of this application with the available material and submissions by the parties before it, the Commission considers Mr Clyne's estimated transfer percentage of 80% to be not unreasonable when taking into account the accessibility to EGMs within Glen Eira and the proximity of competing gaming venues to the RSL. Accordingly, the Commission considers that it is likely that approval of this Application will result in an increase in the net new gaming expenditure at the venue of between \$48,958 and \$97,917 accepting some inevitable uncertainty surrounding such a forecast.
45. Following the recent comments of the Victorian Civil and Administrative Tribunal<sup>9</sup>, the Commission notes that regardless of what analytic tools are employed, a large element of judgement is necessary in forecasting.

<sup>9</sup> In particular, the decisions of *Mount Dandenong Tourist Hotel Pty Ltd v Greater Shepparton CC* [2012] VCAT 1899 and *Francis Hotel Pty Ltd v Melbourne* [2012] VCAT 1896.



46. The Commission considers there to be a marginal economic benefit associated with this application through an increase in gaming expenditure within the municipality. The Commission considers gaming expenditure (excepting that associated with problem gambling) is legitimate consumption expenditure undertaken by a majority of users that are enjoying a recreational activity. The Commission notes that the Productivity Commission considers this associated consumer surplus to be the largest source of benefit from gaming.<sup>10</sup>
47. Additionally, the Commission notes that it is likely that the RSL will receive a taxation benefit through a reduction in overall net machine revenue at the venue. This will provide the RSL with additional revenue to contribute towards its various community initiatives. However, the Commission considers this benefit is offset to a certain extent by the reduction in taxation that would otherwise be received by the State.
48. The Commission considers the capital works associated with the venue will bring a slight economic stimulus, and thus a small benefit, both in the construction phase and the ongoing operation of the improved venue. Moreover, there is likely to be an increase in employment in the hospitality section of the RSL, albeit some of which can be expected to be transferred from elsewhere.
49. Accordingly, the Commission considers that there will be a small positive economic impact on the community if the Application were to be approved.

#### **LIKELY SOCIAL IMPACT OF APPROVAL**

50. Wherever accessibility to EGMs is increased, there is always a risk of an increase in problem gambling, which leads to other economic costs such as lost productivity, increased health and social service requirements and other social costs. Overall, the Commission accepts that there is a small potential for some social downside of the application through possible increased problem gambling expenditure. While noting the research about venue scale and problem gambling, the Commission considered that this particular proposed EGM increase was not demonstrated to carry a threshold risk.

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<sup>10</sup> Australian Government Productivity Commission, "Productivity Commission Inquiry Report: Gambling", Volume 1, No. 50, 26 February 2010.



51. Overall, the Commission is satisfied that the potential for an increase in problem gambling is minimal due to not unfavourable demographics of the local community and the responsible service of gaming policies of the Applicant. The Commission is impressed with the Applicant's attitude towards responsible service of gaming and its relationship with Gamblers Help Southern.
52. The Commission considers that a redeveloped venue with improved accessibility will provide a social benefit to the community and, in particular, the expansion of the RSL's social services is a clear additional benefit. The Commission considers that the proposed increase in community contributions of \$20,000, as well as the on-going community work and sponsorship that the RSL undertakes, will have a positive social benefit.
53. After considering the social benefits of the proposal, balanced against the detriments, the Commission considers that, on the balance, the likely social impact of the proposal will be positive.

## CONCLUSION

54. The no net detriment test in section 3.4.20(1)(c) of the Act requires the Commission to weight the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the wellbeing of the relevant community will be either neutral or positive.<sup>11</sup>
55. After consideration of the material put forward by the Applicant, it is concluded that the social and economic impacts of the proposal are likely to be positive.
56. On the material that has been put before it, the Commission is satisfied of the other matters in section 3.4.20(1). The Commission is also satisfied that the Applicant understands and will continue to act on its obligations to, so far as is reasonable, take measures to prevent problem gambling. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the Application.

***The preceding paragraphs are a true copy of the Reasons for Decision herein of Mr Bruce Thompson, Chairman and Mr Robert Kerr, Commissioner.***

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<sup>11</sup> Romsey (2008) 19 VR 422, 435.