



**REASONS FOR DECISION**

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by Branbeau Pty Ltd for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises at The Family Hotel, 65 Princes Way, Drouin, from twenty (20) to twenty-eight (28) gaming machines.

**Commission:**

Mr Robert Kerr, Commissioner  
Ms Kate Hamond, Commissioner

**Appearances:**

Ms Hicks of Counsel for the Applicant,  
instructed by Bazzani Scully Priddle  
Ms Iona McNab as Counsel assisting the Commission

**Decision:**

That the application be granted subject to the conditions set out in paragraph **40** below.

**Date of Hearing:**

11 June 2013

**Date of Decision:**

26 June 2013

**Signed:**

A handwritten signature in blue ink, appearing to read "Robert Kerr".

Mr Robert Kerr  
**Commissioner**



## REASONS FOR DECISION

### INTRODUCTION

1. This is an application by Branbeau Pty Ltd (**Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at The Family Hotel, 65 Princes Way, Drouin (**Venue**), from 20 to 28 EGMs.
2. The relevant municipal authority is the Baw Baw Shire Council (**Council**). The Council informed the Commission on 9 May 2013 that it had no submission to make in relation to the Applicant's application on the proviso that, should the application be granted, it be made conditional on there being a condition attached to the Applicant's licence in relation to the distribution of the additional cash contributions to the community.

### THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. The Commission's role is to determine the application before it pursuant to the *Gambling Regulation Act 2003* (**Act**).<sup>1</sup> The Act recognizes that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and some members of some communities.<sup>2</sup> For this reason, the Act includes safeguards to ensure a balance is struck between accommodating a lawful and legitimate recreational activity and minimising harm. In making its determination, the Commission must be satisfied that, among other things, the net economic and social impact of the new EGMs on the well-being of the community will not be detrimental (**no net detriment test**).<sup>3</sup>
4. The no net detriment 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>4</sup>

### BAW BAW SHIRE COUNCIL AND THE FAMILY HOTEL – DRUIN

5. The Shire of Baw Baw is a Rural Local Government Area (**Baw Baw LGA**) located approximately 100 kilometres east of Melbourne and covers an area of 4,031km<sup>2</sup>. Major centres in Baw Baw include Warragul, Drouin and Trafalgar. Baw Baw LGA comprises four

<sup>1</sup> Section 3.4.20

<sup>2</sup> Section 1.1(2)

<sup>3</sup> Section 3.4.20

<sup>4</sup> *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [248] (*Romsey Hotel Pty Ltd*)



Statistical Local Areas (**SLAs**), Baw Baw (S) – Pt A, Baw Baw (S) Pt B East, Baw Baw (S) Pt B West and Mount Baw Baw Alpine Resort. The Venue is located in Baw Baw (S) Pt B West. Warragul and Drouin are located in the Baw Baw (S) Pt B West SLA with 55% of the Baw Baw LGA residents split between Drouin and Warragul.

6. Baw Baw LGA is subject to a municipal cap of 299 EGMs<sup>5</sup>. There are currently four (4) venues with 190 EGM entitlements in total (186 of the EGM entitlements are attached). The EGM density of Baw Baw LGA, with 5.55 EGMs per 1000 adults, is below the Country Victorian Average of 6.37. In 2011-2012, EGMs in Baw Baw LGA generated an average expenditure per adult of \$384, well below the Country Victoria average of \$498.
7. The material before the Commission indicated that on the Social and Economic Index of Disadvantage (**SEIFA**), the Baw Baw LGA is ranked 47<sup>th</sup> out of 80 local government municipalities in Victoria. The SEIFA ranking suggests that the Baw Baw Shire is not experiencing high levels of social and economic disadvantage relative to other municipalities in Victoria and Part B West SLA does not display high levels of disadvantage.

## THE MATERIAL BEFORE THE COMMISSION

8. The Applicant filed the following documents in support of its application:
  - Social and Economic Impact Assessment prepared by Mr Rhys Quick of Urbis Pty Ltd dated February 2013.
  - Supplementary letter received from Urbis Pty Ltd dated 5 June 2013.
  - Various plans relating to the lay out of the Venue and proposed works.
  - Expenditure Report prepared by Mr Michael Clyne engaged by Progressive Venue Services, dated January 2013; and
  - Witness Statement of Mr Simon Appleby, director of Branbeau Pty Ltd dated March 2013.
9. The Commission also had before it a statistical report titled Economic and Social Impact Report dated May 2013 (Commission Report), a Pre-hearing Size, Layout and Facilities

<sup>5</sup> Pursuant to section 3.4A.5(3A)(b) of the Act 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.



Report and a Pre-hearing Inspection and Compliance Report all prepared by Commission officers.

10. The Commission also received correspondence from Peter McWhinney of Baw Baw Shire Council regarding Council's decision to make no submission in relation to the application with a proviso that should the application be granted a condition concerning community contributions be added to the licence.
11. The Commission also visited the Venue as part of its inquiry.

### ***Community Contributions***

12. The Application indicates that the proposed annual cash contributions to the community, in the event the application is successful, will be an additional \$10,000 over and above the \$12,000 already contributed.
13. At the hearing, the Commission was presented with a draft condition relating to how the Applicant and the Baw Baw Shire Council propose to form a committee for the distribution of the additional funds.

### ***Evidence of Mr Simon Appleby***

14. Mr Appleby is a director of the Applicant and has operated the Venue for approximately ten (10) years along with his wife. The Venue currently has a bistro with play ground, outside function area, bottle shop and gaming room with 20 EGMs.
15. Mr Appleby gave evidence that the Venue has responsible gambling practices and has developed the Family Hotel Responsible Gambling Policy (**the Policy**) (a copy of which was handed to the Commission). Mr Appleby also has a good working relationship with Gambler's Help and is in regular contact with the venue support officer. Mr Appleby endorsed the suggestion made by the Commission at the hearing that he would be willing to involve Gambler's Help in the review of the Venue's Policy when the time comes.
16. All staff are required to have completed Responsible Service of Gaming training before working in the gaming room. The gaming room is small and many of the patrons are well known to staff. Mr Appleby said that although the cashier is located outside of the gaming room, a staff member walks through the gaming room every ten minutes and the gaming room is also monitored by CCTV.



17. The Venue is situated in a strip shopping area. There is a vacant lot opposite the Venue. Mr Appleby anticipates that the extra funds received from the additional EGMs will allow him to renovate the Venue thus improving the streetscape and making the Venue more attractive to local residents. Mr Appleby outlined the proposed renovations and anticipates that they will cost around \$1.3 million. A planning permit was lodged with the Council in May.
18. Annexure 3 to Mr Appleby's statement sets out the annual community contributions that the Venue made in 2012 totalling \$12,000. Mr Appleby estimates that the Applicant will be able to make a further \$10,000 contribution with the addition of the eight (8) machines. Mr Appleby has drafted, and the Council approved, a condition to be attached to this approval in relation to how the \$10,000 will be distributed in the community.

#### ***Social and Economic Impact Statement – Urbis***

19. The Applicant engaged Mr Rhys Quick, Director of Urbis Pty Ltd (**Urbis**), to prepare a Social and Economic Impact Assessment in relation to the application. Mr Quick also provided an Addendum to the report that incorporates the new 2011 SEIFA data that has recently been released.
20. Mr Quick gave evidence that the demographics of the area in which the Venue is located are unremarkable. The municipality as a whole does not exhibit particular disadvantage. The Venue is located on the edge of a SA1 decile 1<sup>6</sup> and two decile 2 areas are within a five kilometre radius. However, this SA1 has a higher aged population, with more than 50% of the population aged over 60 due to a large retirement home in the area. The SA1 index of disadvantage is skewed by this older population.
21. In Mr Quick's view there were no major concerns with regard to increased access to gaming in the area. The Shire of Baw Baw is experiencing a fast growth in population with many younger families and not the typical demographic of a problem gambler community.
22. In his view there was a modest net benefit to be gained from allowing the application.

#### ***Evidence of Likely Expenditure – PVS***

23. The Applicant provided an expenditure report prepared by Mr Clyne engaged by PVS Australia. Mr Clyne attended the hearing to give evidence.

<sup>6</sup> SA1 replaced the 2006 SEIFA category of CCD. An SA1 has a population of about 300-400.



24. Mr Clyne gave evidence that, should the application be approved, the estimated annual expenditure would be \$249,656, of which 58.8% would be transferred expenditure with net new expenditure totalling \$102,897.

## **FINDINGS BY THE COMMISSION**

### ***Social impact***

25. The Commission notes this application is for a small increase in EGMs in a relatively small venue. Even with the additional eight (8) machines, the Venue will be the smallest in the Baw Baw LGA. Access to EGMs will increase at the margin, but EGM density will still be below average.
26. The approval of new EGMs at a gaming venue has the potential to increase problem gambling and the effects of problem gambling. However, the Commission is satisfied that the Applicant has responsible gambling practices at the Venue that help to manage the risk of increased potential gambling: this includes a good working relationship with Gambler's Help and regularly accepting expert advice from them. The Commission notes that the Applicant is willing to include the local Gambler's Help in the review of its Responsible Gambling Policy.
27. The Applicant has a good track record in relation to the management of the Venue and the management of staff, who have all completed Responsible Service of Gambling training. There is no evidence that there have been any problems of note with this Venue in the past. The Commission is satisfied that the staff are well attuned to the issue of problem gambling and the Applicant is active in educating staff about this issue. In addition, the staff at the Venue are relatively stable with many having been there for a number of years.
28. The Commission also notes the Applicant's assurance that CCTV will be increased in the gaming room in order to cover the extra EGMs and comply with supervision requirements.
29. The Commission accepts that the municipality is not particularly disadvantaged. The nearest small pocket of disadvantage is explained by the presence of retirement homes. The Commission accepts that the risk factors that might increase problem gambling are not material in this case.
30. The Applicant's plans for redevelopment will be worthwhile and some benefits for the community, although not large, will result. The redevelopment will contribute to the beautification of the streetscape and the Commission accepts the Applicant's indication that the Council would welcome this.



31. The Applicant also intends to improve the function room facility to create an indoor function room instead of the current marquee facility. The Commission considers that this would create a benefit for the community.
32. At the hearing, the Commission expressed concern that the redevelopment may not take place in the event that the expenditure from the increase of eight EGMs did not reach the anticipated amounts. These concerns were somewhat ameliorated by the Applicant proposing that the approval be conditional on the works being substantially completed by December 2014.
33. The Applicant's proposed condition in relation to the annual community contributions appears to the Commission to be arranged in a worthwhile way. The Commission accepts that the additional \$10,000 in community contributions per annum (indexed to CPI) will result in a small social benefit for the Shire of Baw Baw. The Commission notes that the Applicant hopes this arrangement will result in some new (to it) community organisations receiving some funds from the Venue. The Commission accepts that the Applicant also intends to provide venue facilities on an in-kind basis to community groups.
34. The Commission also notes that the Applicant at the hearing indicated that it does not intend to increase the hours that the gaming room is open. Accordingly there will continue to be no late night gambling in Drouin.

### ***Economic impact***

35. The Commission accepts that there will be a net increase in EGM expenditure in Baw Baw LGA of approximately \$102,897.00 which represents a small increase of 0.78% in the LGA, with an attendant consumption (recreational) benefit. While the benefit arising from the accompanying increase in tax will flow to the State as a whole, the municipality would expect to receive its proportion.
36. Some employment benefits were said to result from the application being granted. The Applicant gave evidence that, if the application is successful and the renovations take place, he would like to employ between eight (8) and ten (10) staff, with three (3) to four (4) of these positions being full time equivalent. While in theory employment impacts are largely transfers, in a small community such prospects are not negative.



## DECISION AND REASONS FOR DECISION

37. The no net detriment test in section 3.4.20(1)(c) of the Act 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>7</sup>
38. The Commission has considered the likely social and economic impacts of the proposal and, having regard to the condition outlined below, considers that those impacts are likely to be at least neutral, and possibly a small net benefit.
39. On the material put before it, the Commission is also satisfied of the other matters in section 3.4.20(1) being:
- 39.1. that amendment of the licence does not conflict with a direction made under section 3.2.3 and
- 39.2. that the regional limit or municipal limit for gaming machines for the region or municipal district in which the Venue is located will not be exceeded by the making of the amendment.
40. The Commission is satisfied that it should exercise its discretion in favour of the application subject to the conditions presented to the Commission at the inquiry as follows:

### Condition in Relation to Works

1.
  - (a) If the Works, as defined in condition 1(c), are not substantially completed by 31 December 2014, then the approval of the eight (8) additional EGMs will lapse and the maximum number of EGMs that may be operated at the Hotel will revert to 20.
  - (b) The Commission may, upon the request of the Applicant, exercise its discretion to agree to extend the time that the additional eight (8) EGMs may be operated at the Hotel prior to substantial completion of the Works. That request must be

<sup>7</sup> Romsey (2008) 19 VR 422, 435.





made not later than 30 days prior to 31 December 2014. Any request for an extension of time must include an explanation as to why the Works have not been able to be substantially completed by 31 December 2014.

- (c) **The Works** for the purposes of this condition must generally comprise the works as depicted on the plans endorsed pursuant to planning permit application PLA03295.A.

### Condition in relation to Community Contribution

1.

- (a) In the event the Application is approved, the Applicant will establish The Family Hotel Community Grants Program (**the Program**).
- (b) The Applicant will commit to the following:
- i) Making the cash contributions referred to in paragraph 1)b)ii) from the commencement of the operation of the 8 additional EGMs at the Hotel until 15 August 2022;
  - ii) The annual cash contributions will be in the sum of \$10,000.00 (increased each year by the increase in the Consumer Price Index all groups Melbourne) (**the Contribution**);  
  
The Contribution will be allocated/applied each year to not-for-profit community groups and sporting organisations providing services and facilities to residents in the Shire of Baw Baw (with a particular focus on community groups that service the Drouin area).
  - iii) The Contribution as referred to in paragraph 1(b)(ii) will be over and above the existing contributions of \$12,000.00 in cash per annum made by the Applicant.
- (c) The distribution of the Contribution in accordance with paragraph 1)b) above would be determined by a committee established by the Applicant and comprising
- (i) One (1) representative of the Applicant; and
  - (ii) One (1) representative of Council; and



- (iii) One (1) community representative nominated jointly by the Applicant and Council

**(the Committee)**

- (d) The Committee would advertise bi-annually in a newspaper circulating in the Shire of Baw Baw for submissions from not-for-profit community and sporting organisations providing services and facilities to residents in the Shire of Baw Baw (noting the particular focus on community groups and sporting organisations that service the township of Drouin) regarding the distribution of the Contribution to be made by the Applicant each year. The Committee would assess requests for cash contributions in accordance with guidelines to be established by the Committee.

The Applicant shall provide to the Shire of Baw Baw each year evidence confirming payment of the Contribution as set out above for each year.

**The preceding document is a true copy of the Reasons for Decision of Mr Robert Kerr (Commissioner) and Ms Kate Hamond (Commissioner).**