



Victorian Commission for Gambling and Liquor Regulation

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 Drayton Manor Pty Ltd for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises the Foundry Hotel Complex, 366 High Street, Bendigo, from 25 to 45 gaming machines.

Commission Miss Gail Owen, Deputy Chairman

Appearances Ms Sarah Porritt of Counsel for the Applicant (instructed by Bazzani Scully Priddle Lawyers)

Mr Justin Ghattas as Counsel Assisting the Commission

Date of Hearing 28 June 2014

Date of Decision 30 July 2014

Decision The application is granted.

Signed

Miss Gail Owen

Deputy Chairman



REASONS FOR DECISION

INTRODUCTION

1. This is an application by Drayton Manor Pty Ltd (**the Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Foundry Hotel Complex, 366 High Street, Bendigo (**the Hotel**), from 25 to 45.
2. The relevant municipal authority is the City of Greater Bendigo Council (**Council**). The Council did not make any submissions to the Commission.

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* (**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.¹ 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 wishing 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.²
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.³

THE CITY OF GREATER BENDIGO AND THE FOUNDRY HOTEL COMPLEX

5. The City of Greater Bendigo (**Bendigo**) is a regional Local Government Area (**LGA**) located approximately 150 kilometres north of Melbourne and includes the major centres of Bendigo, Eaglehawk and Heathcote. Bendigo occupies seven Statistical Local Areas⁴ (**SLAs**): Greater Bendigo – Central, Greater Bendigo – Eaglehawk, Greater Bendigo – Inner East, Greater Bendigo

¹ See: s 1.1(2) of the Act.

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

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

⁴ 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.



- Inner North, Greater Bendigo – Inner West, Greater Bendigo – Strathfieldsaye, and Greater Bendigo – Part B.
- 6. Bendigo is subject to a municipal limit of 756 EGMs⁵. Currently there are 11 gaming venues in the municipality operating a total of 614 EGMs. The Hotel is one of two venues approved for gaming within the Greater Bendigo - Central SLA. If this application is granted, the installation of 20 additional EGMs at the Hotel will take the number of EGMs operating in Bendigo to 634.
- 7. Bendigo has an average of 7.39 EGMs per 1,000 adults which is 3.2% less than the regional average and 27% more than the State average. Expenditure on EGMs in the Bendigo municipality for the 2012-13 financial year was \$45,393,331, equating to an average expenditure per adult of \$546, which is 6.03% less than the regional average and 0.59% less than the State average. Gaming expenditure in Bendigo has decreased by 12.82% in real terms over the last five years compared with an 18.20% decrease in regional Victoria over the same period.
- 8. The Greater Bendigo – Central SLA is ranked 10th out of the 31 regional SLAs on the SEIFA scale for disadvantage,⁶ indicating that the area surrounding the Hotel exhibits some signs of disadvantage. When broken down into a Census Collection District level, 28.8% of collection districts within a 2.5km radius of the Hotel are in the first quintile of disadvantage, indicating that there are some areas of significant disadvantage in the immediate vicinity of the Hotel.

The Foundry Hotel Complex

- 9. The Commission was told the Applicant had been involved with the Hotel since 1989, when it obtained the leasehold to the Premises. The Applicant carried out renovations in 2003 and 2012 at a cost of approximately \$2 million. This included the introduction of function spaces, a landscaped courtyard and function kitchens and the refurbishment and extension of, and alterations to, the bistro and cocktail lounge and the demolition of the bottle shop.
- 10. The facilities at the Hotel include a bistro with seating for 150 patrons, an outdoor courtyard, a cocktail lounge which doubles as a function space, a gaming room with 25 EGMs, and four dedicated function rooms catering for up to 300 patrons.
- 11. The Applicant plans to use revenue generated from the additional EGMs to undertake further redevelopment of the Hotel to provide a wider range of facilities. These works would involve the

⁵ Pursuant to section 3.4A.5(3)(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.

⁶ 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.



construction or conversion of function areas, provision more parking and better access to the Hotel.

THE MATERIAL BEFORE THE COMMISSION

12. The Applicant provided the Commission with material in support of its application, including:

- a) Social and Economic Impact Assessment, prepared by Ms Colleen Peterson of Ratio Consulting, dated April 2014 (**Ratio Report**);
- b) Gaming Expenditure Estimate Report prepared by Mr Michael Clyne (**Clyne Report**), dated 25 March 2014;
- c) Witness Statement of Mr Michael Robert Kuchel, company director of the Applicant, dated April 2014;
- d) Witness Statement of Mr Sam Pellegrino, Gaming Supervisor at the Hotel, dated April 2014; and
- e) Witness Statement of Mr Leigh James Barrett, Consultant at Leigh Barrett and Associates, dated 25 March 2014.

13. After the conclusion of the hearing of the Application, the Applicant lodged with the Commission proposed conditions that would be acceptable to the Applicant if the application were granted.

14. The Commission also considered an Economic and Social Impact Report dated June 2014 and a Pre-Hearing Inspection and Compliance Report, dated 20 June 2014, both prepared by Commission staff.

Social and Economic Impact – Ms Colleen Peterson, Ratio Consulting

15. The Ratio Report stated that:

- a) the SEIFA index for the Greater Bendigo LGA is below the median for Victorian LGAs but is slightly above the median for rural municipalities;
- b) the suburbs that comprise the primary catchment of the venue – based on patron surveys, Golden Square, Bendigo and Kangaroo Flat - have SEIFA scores significantly below the median for Victorian suburbs, with most of the catchment areas falling within the second or third decile;
- c) the broader patron catchment area – which forms the residual areas on the basis of the patron surveys – also have SEIFA scores between the first and third decile, which is below



the average for Victorian suburbs (with the exception of Strathdale and Melbourne, which form 2.9% and 2.4% respectively of the patron catchment);

- d) the net machine revenue (**NMR**) at the Hotel is quite low, comparative to other venues within Greater Bendigo and in relation to regional Victoria generally;
- e) Greater Bendigo experiences higher than average housing stress and unemployment comparative to country Victoria, and also experiences a lower weekly household income comparative to country Victoria;
- f) the principal economic and social costs of the application relate to the potential increase in problem gambling;
- g) the proposed increase in EGMs at the Hotel would make the Hotel a “mid-range” venue, and likely to remain a destination venue given the surrounding commercial uses;
- h) the increase in EGMs will have a limited impact on problem gambling, given that the EGM offering forms a small part of the overall facilities available at the Hotel and the low NMR would likely translate to a lower likelihood of problem gambling behaviour occurring.

16. Ms Peterson stated that the economic and social benefits of the application, such as improvements to venue facilities, access to more EGMs in peak times, and the ability to maintain community contributions, would outweigh any costs, such as the potential for an increase in problem gambling behaviour.

17. Ms Peterson concluded that approval of the application would have a positive impact on the community of Greater Bendigo.

Likely EGM expenditure – Mr Michael Clyne

18. The Clyne Report estimated that, based on the performance of the existing EGMs in the venue, their utilisation rate and the attractiveness of the venue, an additional 20 EGMs would generate additional annual revenue of between \$1,485,578 and \$1,856,972 of which approximately 90% would be transferred from existing venues within Greater Bendigo, with the residual 10% (or between \$150,592 and \$188,240) being new expenditure.

19. Mr Clyne calculated the increase in overall gaming expenditure in Bendigo to be no more than 0.41%, with net machine revenue at the Hotel of \$102 per EGM per day; which is well below the State average of \$357.



20. The Commission accepts the estimates provided by Mr Clyne as reasonable estimates of likely EGM expenditure at the Hotel, if the application were granted.
21. Mr Clyne considered that an increase in EGMs would not have a detrimental impact on Bendigo, and would be an important measure in allowing the venue to continue to provide community contributions and maintain financial stability.

The Foundry Hotel Complex – Mr Michael Kuchel, Director

22. Mr Kuchel gave evidence about the operation of the Hotel and the intended use of the additional revenue which would be generated if the application were granted.
23. Mr Kuchel outlined his experience in the hospitality industry, with a particular emphasis on his operation and management of the Hotel for over 20 years. Mr Kuchel gave evidence that he has been involved in the operation of the Hotel as part of the family business.
24. The Commission was provided with a substantial list of local community organisations to which the Hotel has committed to provide donations. While the Hotel was unable to donate the pledged amount of \$40,000 in the last financial year, Mr Kuchel stated that the balance of approximately \$33,000 would be added to the \$40,000 amount committed for donation in the coming 12 month period.
25. Mr Kuchel also outlined the Applicant's commitment to providing an ongoing annual donation to the St Luke's Venue Support Program. This program administers problem gambling initiatives in the Greater Bendigo area. Mr Kuchel indicated that the Applicant would pay \$10,000 per annum, indexed annually by CPI.
26. Mr Kuchel provided the Commission with a substantial list of community groups that have received in-kind contributions from the Hotel or have used the conference and function facilities at a reduced or no charge.
27. Mr Kuchel indicated that the number of EGMs the subject of the application was based on the anticipated level of patronage at the Hotel.
28. Mr Kuchel emphasised that his focus remained the provision of a high quality food and beverage offering at moderate prices and he anticipates that the improvements to the bistro and gaming room and the additional EGMs will lead to increased patronage and the need for an increase in staff.



The Foundry Hotel Complex – Mr Sam Pellegrino, Gaming Supervisor

29. Mr Pellegrino provided evidence to the Commission of operational aspects of the Hotel, including the day-to-day function of the gaming room.
30. Mr Pellegrino outlined to the Commission his experience of 17 years in the gaming industry, across a variety of venues.
31. The day-to-day protocols and procedures were outlined to the Commission as part of Mr Pellegrino's submissions. Mr Pellegrino provided some insight into the procedures at the Hotel to assist patrons displaying signs of problem gambling and deal with self-excluded persons.
32. Mr Pellegrino stated that the patrons at the Hotel were mostly 'regulars' that were known to staff, including Mr Pellegrino, and as such, staff were more readily able to identify signs of distress indicating that patrons may be at risk of problem gambling.
33. Mr Pellegrino indicated that Responsible Service of Gaming training had previously occurred, and will into the future with Leigh Barrett and Associates, with regular sessions occurring at least annually.

Mr Leigh Barrett, Leigh Barrett and Associates

34. Mr Barrett provides Responsible Service of Gaming training to gaming venues in Victoria, with a focus on regulatory compliance and ensuring that gambling policies and procedures are properly established.
35. Mr Barrett provided evidence to the Commission of the level of training that he has provided at the Hotel and the level of competence of staff in assessing and assisting patrons that may be exhibiting behaviour suggesting an increased risk of problem gambling.
36. Mr Barrett also addressed the concerns of the Commission in relation to a potential 'blind' area within the proposed gaming area. Mr Barrett stated that, irrespective of the way in which the layout of the gaming room, the Hotel will have CCTV facilities at the gaming cashier counter that this will enable staff to monitor the whole of the gaming room.
37. Mr Barrett concluded that any increase to the number of EGMs would have a negligible impact on the prevalence of problem gambling in Greater Bendigo as there are already a number of larger venues within the municipality that are likely to be more attractive to people with problematic gambling behaviour.



LIKELY ECONOMIC IMPACT OF APPROVAL

38. The Commission accepts that there is unlikely to be a significant increase in expenditure within Greater Bendigo as a result of approval of this application. Expenditure derived from those pursuing gaming as a recreational activity is legitimate consumption expenditure and has a positive economic stimulus. However, expenditure derived from problem gaming is an economic burden leading to social costs such as a loss in productivity and an increase in health and social service requirements.
39. The Commission considers there to be a very slight economic and social benefit in strengthening the financial position of the Hotel so that it may continue its offering to the community and improve its facilities..
40. While the Commission is satisfied that the increase in gaming revenue will be used to improve the facilities at the Hotel, which is a benefit, it is not one to which the Commission can assign significant weight.
41. The Commission accepts that an increase of EGMs at the Hotel would create approximately seven full-time equivalent jobs, with 2.5 in the gaming room, which would likely be sourced from the local community.
42. The Commission also attaches some weight to the addition of serviced apartments to the Hotel, and the positive impact that may be derived from tourism in the region. The Commission considers this to be a small economic benefit in line with the statutory purpose of tourism under the Act.
43. The Commission accepts that there is potential for economic disbenefit through increased problem gambling. This potentiality is limited by the low level of the expected revenue from the additional EGMs, the location, size and nature of the venue and the responsible gaming practices of the Applicant.
44. Accordingly, the Commission considers that there will be a neutral economic impact on the municipality if the application is approved.

LIKELY SOCIAL IMPACT OF APPROVAL

45. The Commission accepts that the Hotel is a destination venue frequented by members of the local community and considers this provides a social benefit. This is offset by the social disbenefit of problem gambling.



46. The redevelopment of the Hotel may have some benefit insofar as allowing an increase in function spaces and accommodation and generally making the Hotel a multi-purpose facility with a variety of offerings. The Commission attaches some, but not significant, weight to these improvements.
47. The Commission is satisfied that, despite the relatively large increase in the total number of EGMs and the disadvantage evident in the areas surrounding the Hotel, the Applicant has best practice procedures in place, low NMR and utilization of EGMs and alternative non-gambling entertainment and recreation at the Hotel so as to lessen the possibility of an increase in the incidence of problem gambling.
48. The Commission also notes the ongoing contributions of \$10,000 per annum to the St Luke's Anglicare Gamblers Help Program that the Applicant has committed to for the life of the entitlements and contributions to other sporting, community or cultural groups in the Greater Bendigo community totalling \$40,000 per annum until 2022.
49. The Commission concludes that there will be a neutral social impact on the community if the application is approved.

CONCLUSION

50. After weighing the likely social and economic benefits and disbenefits to the municipality, the Commission considers the net impact of the Application to be neutral, and as such, determines to grant the Application subject to the following conditions:

Works

1. *The additional 20 EGMs must not commence operation until the Stage 1 works have been substantially completed to the satisfaction of the Commission. If the Stage 1 works have not been substantially completed by **31 March 2016** (or such later date as agreed in writing by the Commission), the approval to increase EGMs at the Hotel from 25 to 45 will lapse.*
2. *The Stage 1 works consist of:*
 - a. *conversion of existing Platinum Room and open courtyard into a new gaming room, lounge area and function room with amenities;*
 - b. *construction of new entry into lounge area from car park;*
 - c. *conversion of existing gaming area into an additional function area;*
 - d. *construction of new external courtyard adjoining Stirling Room;*
 - e. *conversion of existing courtyard into new function room; and*



- f. construction of new Shamrock Street entrance with canopy.
3. If the Stage 2 works have not been substantially completed by **31 December 2017** (or such later date as agreed in writing by the Commission), the approval to increase EGMs at the Hotel from 25 to 45 will lapse.
4. The Stage 2 works consist of:
 - a. construction of six new apartments at the rear of 33-35 Shamrock Street;
 - b. conversion of existing residence at 33 Shamrock street into two apartments;
 - c. conversion of existing dwelling at 35 Shamrock Street into one apartment as well as a manager's and reception office;
 - d. construction of a new car park with 14 spaces on the adjacent property at 14 Old High Street and conversion of same into self-contained accommodation; and
 - e. construction of pool and barbecue area.
5. If the Stage 3 works have not been substantially completed by **31 December 2018** (or such later date as agreed in writing by the Commission), the approval to increase EGMs at the Hotel from 25 to 45 will lapse.
6. The Stage 3 works consist of:
 - a. construction of new children's play area adjacent to the bistro;
 - b. conversion of existing dwelling at 10 Rose Street into one apartment; and
 - c. construction of four new apartments in a double storey addition at the rear of the dwelling at 10 Rose Street.
7. Any request for an extension of time must include an explanation as to why the works have not been substantially completed by the relevant date.

Community Contributions

8. The venue operator will make the following cash contributions:
 - a. \$20,000 per annum (indexed each year by CPI) from the commencement of the operation of the 20 additional EGMs at the Hotel until the completion of the Stage 3 works; and



- b. \$40,000 per annum (indexed each year by CPI) from the completion of Stage 3 works until 15 August 2022.
9. The contributions will be allocated to not-for-profit community groups and sporting organisations providing services and facilities to residents of Greater Bendigo.
10. The distribution of the contributions in accordance with Condition 9 above will be determined by a committee established by the venue operator comprising:
- a. two representatives nominated by the venue operator; and
 - b. one representative nominated by the City of Greater Bendigo Council or, if Council does not nominate a representative, a community representative nominated by the venue operator.
11. The committee will advertise annually in a newspaper circulating the City of Greater Bendigo area for submissions from not-for-profit and community organisations providing services and facilities to the community of Greater Bendigo. The committee will assess requests for cash contributions in accordance with guidelines to be established by the committee.
12. In addition to the payment of the contributions referred to at Condition 8, the venue operator must continue to pay cash contributions to sporting and community groups in the Greater Bendigo area of not less than \$50,000 per annum (indexed annually to CPI until 15 August 2022).
13. If the venue operator sells or transfers the Hotel business to a third party, the venue operator must require the transferee to assume responsibility for the obligations as outlined from Condition 8 to 13.

The preceding 50 paragraphs are a true copy of the Reasons for Decision of Miss Gail Owen, Deputy Chairman.