



Victorian Commission for Gambling and Liquor Regulation

CORRIGENDUM

In the matter of an application under section 3.4.17(4) of the *Gambling Regulation Act 2003* by Dun-Ra Investments Pty Ltd, to amend its venue operator's licence to vary the number of gaming machines at the approved premises, the Sphinx Entertainment Centre, Thompson Road, Geelong, Victoria, from sixty-three (63) to sixty-seven (67) gaming machines.

Commission: Gail Owen, Acting Chairman

Date of Decision and Reasons for Decision: 25 March 2013

CORRIGENDUM

Date: 17 April 2013 Gail Owen, Deputy Chairman

1. At the conclusion of paragraph 2 delete the full stop and add the following text: “, based on the Applicant's consent to the imposition of certain conditions if the application were approved”.
2. At paragraph 35 delete the final sentence.
3. Following paragraph 43 add the following text as paragraphs 44 and 45.
“44. The approval of the application is subject to the following conditions, to which the Applicant consented:
 - the Applicant must construct a frosted glass partition, separating the gaming room from the bistro prior to the operation of the additional EGMs; and
 - the Applicant must comply with the attached undertaking signed by a director of the Applicant on 5 April 2013; and

- should the Applicant fail to comply with the attached undertaking this approval will lapse and the number of EGMs that may be operated by the Venue will revert to 63; and
- if the Works (as defined below) are not substantially completed by 30 June 2016 this approval will lapse and the number of EGMs that may be operated by the Venue will revert to 63.


Works for the purposes of this condition comprise the following:

- (a) the refurbishment of the existing accommodation;
- (b) the construction of an outdoor garden and function centre; and
- (c) the construction of 20 additional rooms,

as per the indicative plans prepared by Bate Architecture and dated August 2012.

45. The Commission may, upon the request of the Applicant, agree to extend the time that the additional four (4) gaming machines may be operated at the premises prior to substantial completion of the Works. That request must be made not later than 30 days prior to 30 June 2016. 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 30 June 2016.”

The preceding three (3) paragraphs and the attached undertaking are a true copy of the corrigendum to the reasons for decision herein of –



Gail Owen, Deputy Chairman

In the matter of an application to the Victorian Commission for Gambling and Liquor Regulation by Dun-Ra Investments Pty Ltd for an additional 4 electronic gaming machines in relation to the Sphinx Entertainment Centre, 2 Thompson Road, North Geelong

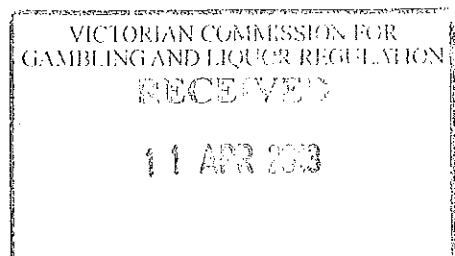
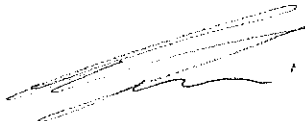
UNDERTAKING

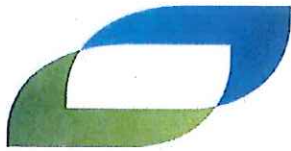
The commitments in this undertaking are offered to the Victorian Commission for Gambling and Liquor Regulation by Dun-Ra Investments Pty Ltd in the event of approval of an additional 4 electronic gaming machines:

- 1) The Applicant will commit to the following:
 - a) Making the cash contributions referred to in paragraph 1(b) from the commencement of the operation of the 4 additional electronic gaming machines (EGMs) at the Sphinx Entertainment Centre, 2 Thompson Road, North Geelong (Hotel) up to 16 August 2022;
 - b) The annual cash contributions will be in the sum of \$7,500.00 (increased each year by the increase in the Consumer Price Index all groups Melbourne) (the Contribution);
 - c) The Contribution will be allocated/applied each year as follows:
 - i) 50% to gambling support services operating in the Geelong West and/or Corio Inner statistical local areas; and
 - ii) 50% to not-for-profit community groups and sporting organisations in the City of Greater Geelong.
- 2) The distribution of the Contribution in accordance with paragraph 2 above would be determined by a committee established by the Applicant (the Committee).
- 3) The Committee would advertise annually in a newspaper circulating in the City of Greater Geelong area for submissions from not-for-profit community and sporting organisations within the City of Greater Geelong, 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.
- 4) The Applicant shall provide to the Commission, if requested by the Commission, evidence confirming payment of the Contribution each year.

Dated: 5th day of April 2013

Signed for and on behalf of Dun-Ra Investments Pty Ltd by a director:





Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application under section 3.4.17(4) of the *Gambling Regulation Act 2003* by Dun-Ra Investments Pty Ltd, to amend its venue operator's licence to vary the number of gaming machines at the approved premises, the Sphinx Entertainment Centre, Thompson Road, Geelong, Victoria, from sixty-three (63) to sixty-seven (67) gaming machines.

Commission: Gail Owen, Acting Chairman

Date of Decision: 25 March 2013

Date of Reasons: 25 March 2013

Decision: That the application be granted

Signed:

Gail Owen
Acting Chair

REASONS FOR DECISION

APPLICATION

1. By application dated 30 October 2012, and pursuant to section 3.4.17(4) of the *Gambling Regulation Act 2003* (the **Act**), Dun-Ra Investments Pty Ltd (the **Applicant**) applied to the Victorian Commission for Gambling and Liquor Regulation (the **Commission**) for amendment of its gaming venue operator licence to vary the number of Electronic Gaming Machines (**EGMs**) at the Sphinx Entertainment Centre (the **Hotel**) located at Thompson Road, Geelong, Victoria, from 63 to 67.
2. The Hotel is situated within the City of Greater Geelong. On 22 January 2013, the City of Greater Geelong Council (the **Council**) provided the Commission and the Applicant with a written submission in opposition of the application. On 5 February 2013 the Council advised the Commission that it was withdrawing its opposition to the application.
3. The Commission has determined to grant the application. The Commission provides its Reasons for Decision in respect of the application below.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. The Act recognises that, notwithstanding individual rights of self-determination and gaming's recreational legitimacy, gaming on EGMs causes harm to some communities and some members of some communities.¹ It is for this reason that the Act includes safeguards to ensure that an appropriate balance is struck between a lawful and legitimate recreational activity for some and harm for others.
5. Section 3.4.20(1) of the Act sets out the matters to which the Commission must have regard in determining an application of this nature, and provides (relevantly):
 - (1) Without limiting the matters which the Commission may consider in deciding whether to make a proposed amendment, the Commission must not amend a venue operator's licence unless—
 - (a) the Commission is satisfied that the amendment of the licence does not conflict with a direction, if any, given under section 3.2.3; and

¹ See *Gambling Regulation Act 2003* (Vic), s 1.1(2).

- (b) if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the regional limit or municipal limit for gaming machines for the region or municipal district in which the approved venue is located will not be exceeded by the making of the amendment; and
- (c) if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that the net economic and social impact of the amendment will not be detrimental to the well-being of the community of the municipal district in which the approved venue is located.

6. The Commission has discretion to grant or refuse an application, regardless of whether it is satisfied of the matters in section 3.4.20(1). However, the 'no net detriment test' requires the Commission to weigh the likely positive economic and social impacts of an application against the likely negative economic and social 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.²

THE MATERIAL BEFORE THE COMMISSION

7. The Applicant filed the following documents in support of its application:
- Social and Economic Impact Statement prepared by Rhys Quick, Urbis Pty Ltd, dated November 2012 (the **Urbis report**);
 - Expenditure Report - The Sphinx Hotel, prepared by Richard Whitehouse, Progressive Venue Services (**PVS**), dated September 2012;
 - Witness Statement of Leigh James Barrett, Leigh Barrett and Associates Pty Ltd, dated 21 October 2012;
 - Witness Statement of George Anthony Ramia, Director of the Applicant, dated 30 October 2012;
 - Witness Statement of Stephen Geoffrey Shannon, Manager of the Sphinx Hotel, dated November 2012.
8. A letter from Ray and Marianne Nyhof, operators of the Parkwood Motel (which is located approximately 150 metres from the Hotel), dated 5 February 2013, was also received by the Commission in opposition to the application.

² *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, 435 (Romsey)

9. The Commission also had before it a statistical report titled Economic and Social Impact Report dated February 2013 (the **Commission Report**) and a Pre-Hearing Inspection and Compliance Report prepared by Commission officers.

REGIONAL LIMIT ON EGMs

10. The City of Greater Geelong is subject to a regional cap of 1,421 gaming machines. Currently, there are 25 gaming venues within the City of Greater Geelong operating a total of 1,307 gaming machines.
11. As at the time of this application the Applicant had not yet purchased the additional 4 gaming entitlements which, in addition to this approval, are required to operate the gaming machines.

NET ECONOMIC AND SOCIAL DETRIMENT

12. In assessing whether the granting of this application would result in a net economic and social detriment to the local community, the Commission took into account the factors discussed below.

The City of Greater Geelong

13. The approved premises is situated in Geelong West which lies within the Regional Local Government Area (**LGA**) of the City of Greater Geelong, located approximately 75 kilometres south west of Melbourne.
14. The City of Greater Geelong has an adult population of 176,048 which is the highest adult population of the 13 regional municipalities in Victoria and has a projected population growth rate of 1.5% over the next four years.³

Economic and Social Impact Key Indicators

15. The Equivalised Household Income of the area immediately surrounding the approved premises is approximately 6% higher than the average for regional Victoria.
16. Geelong has a slightly higher proportion of housing stress compared to the average in regional Victoria. This indicates that the number of households in

³ *Victoria in Future*, Population and Household Projections 2011-2031 for Victoria and its region, Department of Planning and Community Development dated April 2012.

Geelong with housing costs (rent or mortgage) greater than 30% of the household's total income is slightly higher than the average of Regional Victoria.

17. The City of Greater Geelong LGA is comprised of 8 Statistical Local Areas (SLA). The major towns in the LGA are Geelong, Ocean Grove, Lara and Leopold. The Hotel is situated within the Geelong West SLA which is ranked 21 out of the 41 regional SLAs on the Socio-Economic Index for Areas (SEIFA) of disadvantage, with 41 being the most disadvantaged when compared to other regional SLAs. SEIFA is a measure of relative socio-economic disadvantage produced by the Australia Bureau of Statistics. The index is created by combining a number of indicators of disadvantage including low educational attainment, high unemployment, proportion of the population in unskilled occupations and low equalised household income levels.
18. The unemployment rate for the Geelong West SLA is 5.54%, which is lower than the average rate of unemployment for regional Victoria, being 6.17%.

Gaming Specific Key Indicators

19. The City of Greater Geelong currently has 7.42 EGMs per thousand adults and is ranked 8 out of the 13 regional municipalities in Victoria in terms of EGMs per thousand adults. If this application is approved it would result in an increase to 7.45 per thousand adults to the number of EGMs in City of Greater Geelong.
20. The City of Greater Geelong currently has an adult population per gaming venue of 7,042, which is approximately 19% more than the average in regional Victoria and 21% less than the State average. As this is not a new premises, it is noted that approval of this application would have no effect on the adult population per gaming venue in City of Greater Geelong.
21. The City of Greater Geelong has the fourth highest gaming expenditure per adult of the 13 regional municipalities in Victoria with an average expenditure of \$662 per adult per year (compared to the regional average of \$627 and the State average of \$602). Expenditure on gaming machines in the City of Greater Geelong for the 2011-12 financial year was \$116,525,894. The Applicant estimates that the new expenditure derived from an additional 4 EGMs would result in an increase of \$90,968 in the first year of operation. On the basis of this estimate, the

Commission report estimates that approval of the application would have no significant impact on expenditure per adult.⁴

22. Gaming expenditure in City of Greater Geelong has decreased by 18.03% in real terms (indexed to CPI) over the past five years. Gaming expenditure in regional Victoria has decreased by 16.76% in real terms over the past five years. This indicates that gaming expenditure in the City of Greater Geelong has decreased at a slightly higher rate than that of regional Victoria generally.

Social and Economic Impact of the Application

23. The Urbis report states the principal economic and social benefit of the application is that it will enhance the financial position of the Hotel, and assist, in part, to:

- increase the accommodation capacity of the Hotel with the construction of a 20 boutique accommodation rooms;
- construct new facilities, including an outdoor garden and a function centre, and employ additional staff that will be required in the new facilities. This includes approximately an additional 5 casual staff at the Hotel, and it is estimated that the construction works will generate 37 jobs during the construction phase.

24. Currently, the Applicant estimates that it has contributed over \$67,000 in donations and 'in-kind' contributions to local groups and charities over the course of the last 12 months. The Applicant will contribute an additional \$7,500 per annum to community and sporting groups, of which \$3,750 per annum will be paid to the Gambling Support Services. This community contribution will be increased by CPI annually.

25. Finally, the Urbis report concludes that the additional machines will increase availability of gaming for those members of the neighbouring community who enjoy gaming as a recreational activity.

26. The Urbis report notes that the disbenefit of this application is the potential for an increase in problem gaming. However, the report states it would be unlikely for this increase to be material for the following reasons:

⁴ The Commission notes that the increase in gaming expenditure per adult per year as a result of this application being approved would be an increase of 0.07%.

- The increase in gaming machines is small and will result in a marginal increase in expenditure;
- The Hotel is located away from retail and activity centres within the SLA;
- The demographic profile of the area surrounding the venue, in comparison to other areas of Geelong, shows less signs of disadvantage;
- There is already ready access to EGMs at other venues in the area surrounding the Hotel.

27. Overall, the Urbis report concludes that the additional machines will not result in a net detriment to the well-being of the people in the City of Greater Geelong.

Gaming Expenditure

28. Mr Whitehouse stated in his report that the total increased gaming expenditure for the additional 4 EGMs at the Hotel at the conclusion of the first twelve months of trade would be approximately \$313,417.

29. Further, Mr Whitehouse estimated that approximately 71% of the increased gaming expenditure will be transferred expenditure. Therefore, taking into account estimated transfer from the other venues, the Applicant submits that estimated new gaming expenditure for this venue as a result of the additional 4 EGMs is \$90,968.

30. Based on the 71% transferred expenditure estimate, Mr Whitehouse concludes that the overall impact on the LGA expenditure would be an increase of 0.08%. He submitted that this degree of change would not be identifiable in the annual figures reported by the VCGLR and that a change of this size would be absorbed by the normal trade patterns of the region.

31. The Commission notes that the wide range of factors (including some subjective factors)⁵ taken into account when estimating transferred expenditure creates difficulty in achieving accuracy in predictions.

FINDING BY THE COMMISSION

32. The 'no net detriment test' in section 3.4.20(1)(c) of the Act requires the Commission to weigh the likely positive economic and social impacts of an

⁵ The factors include: the facilities on offer at surrounding venues, the location of other venues, the local demographics and the overall 'attractiveness' of the surrounding venues based on the Geotech Model

application against the likely negative economic and social impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission concludes that the net economic and social impact of approval on the well-being of the relevant community will be either neutral or positive.⁶

33. The Commission accepts that an additional 4 EGMs at the Hotel will increase economic activity by enabling the Applicant to construct an additional 20 accommodation rooms. The Commission notes that the revenue obtained by an additional 4 EGMs will only have a marginal impact on the timing of the delivery of the new accommodation, and construction is not conditional on the approval of the additional 4 EGMs. However the Commission accepts that bringing forward the construction of these facilities is an economic and social benefit of this application.
34. The Commission is satisfied that the Hotel provides a positive social benefit to the City of Greater Geelong in terms of employment and tourism. The construction of the further facilities, being a function centre, an outdoor garden, and the refurbishment of the existing accommodation, will undoubtedly enhance the Hotel's offering to the community and increase economic activity at the Hotel. The Commission finds this to be an economic benefit of this application.
35. The Commission accepts that a social benefit arises when the Hotel makes contributions to community and sporting groups. The Applicant's additional community cash contributions of \$7,500 (of which \$3,750 will be contributed to the Gambling Support Services operating in the City of Greater Geelong) arising from the grant of this application is regarded as a positive social benefit. The Commission notes that the Applicant provided a signed undertaking committing it to this community contribution. However, the Commission has determined not to impose this undertaking as a condition on the granting of this application.
36. The Commission accepts that a potential increase in EGM expenditure within a community brings with it an inherent risk of an increase in problem gambling. However, the Commission considers that, given approval of this application will result in a modest increase in expenditure, it is unlikely that an additional 4 EGMs will result in a material rise in problem gambling within the City of Greater Geelong. The Commission considers that approval of this application is likely to have a

⁶ Romsey (2008) 19 VR 422, 435

minimal impact on gaming expenditure and will not increase the availability of EGMs in the community to any significant degree. Further, the granting of this application will not increase the number of gaming venues in the municipality of the City of Greater Geelong.

37. The Commission gives the estimate of transferred expenditure limited weight.
38. After weighing the likely economic and social impacts of the application the Commission considers that there will be a likely neutral social impact on the well-being of the community. Further, the Commission considers the economic impact on the well-being of the community is neutral.
39. The Commission is satisfied that the granting of this application would not result in a net economic and social detriment to the City of Greater Geelong community.

Conclusion

40. The Commission has considered the likely social and economic impacts of the proposal and is satisfied that the net economic and social impact of approving this application will not be detrimental to the well-being of the community of the City of Greater Geelong.
41. Based on the material provided to the Commission prior to and at the time of the public inquiry, the Commission is satisfied that the Applicant has the authority to make the application.
42. The granting of this application would not conflict with any Ministerial Direction given pursuant to section 3.2.3 of the Act.
43. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the application.⁷

The preceding document is a true copy of the Reasons for Decision of Ms Gail Owen, Acting Chairman.

⁷ The administrative process of amending the licence will take place at a time subsequent to this decision as allowed by section 3.4.20 of the Act.