



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 the Gida Construction Pty Ltd for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises Browns Corner Hotel, 502 Sydney Road, Coburg from twenty-eight (28) to thirty-five (35) gaming machines.

Commission:

Mr Mark Brennan, Chair

Mr Robert Kerr, Commissioner

Appearances:

Mr Nick Tweedie of Counsel for the Applicant
(instructed by Zervos Lawyers)

No appearance for the Moreland City Council

Mr Rupert Watters as Counsel Assisting the Commission

Date of Hearing:

15 November 2012

Date of Decision:

15 November 2012

Date of Reasons

12 December 2012

Decision:

That the application be granted.

Signed:

Robert Kerr

Commissioner

REASONS FOR DECISION

INTRODUCTION

1. This is an application by Gida Construction Pty Ltd (**the Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at Brown's Corner Hotel, 502 Sydney Road, Coburg (**the Hotel**), from 28 to 35 EGMs. The Hotel has successfully obtained the necessary entitlements to install the EGMs if the amendment is granted.
2. The relevant municipal authority is Moreland City Council (**the Council**). The Council opposed the application but declined to appear at the hearing 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.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 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.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
5. 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 well-being 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: section 3.4.19(5) of the Act. This recognises the special role of local government in representing the

¹See 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").



people of a community.⁴

THE CITY OF MORELAND

6. Moreland City Council is a metropolitan Local Government Area located approximately 10 kilometres north of the Melbourne CBD and covers an area of 51 km². Major centres within Moreland include Brunswick, Coburg and Glenroy. Moreland occupies three Statistical Local Areas (SLAs),⁵ Moreland – North, Moreland – Coburg and Moreland – Brunswick. The Hotel is located within Moreland – Coburg.
7. Moreland is subject to a municipal limit of 725 EGMs. Additionally, part of Moreland is subject to a regional cap of 640 EGMs (**Moreland Region A**).⁶ Currently there are 15 gaming venues within the municipality with approvals to operate up to 714 EGMs. Of these 585 are found within Moreland Region A, including the Hotel.
8. Moreland City has an average of 5.71 EGMs per 1,000 adults which is 3% more than the metropolitan average (5.52 EGMs/1000 adults) and marginally below the State average (5.73 EGMs/1000 adults). Expenditure on EGMs in the Moreland for the 2011-2012 financial year was \$69,605,532 which equates to an average expenditure per adult of \$557 per adult, which is 13% less than the metropolitan average (\$638 per adult per annum) and 7% less than the State average (\$602 per adult per annum).
9. The trend of gaming expenditure in Moreland is declining. Over the past five years, gaming expenditure in Moreland has declined by 17.9% in real terms. This is greater than the average decline experienced by metropolitan areas, which was 11.46% over the same period.
10. The Moreland – Coburg SLA is ranked 62nd out of the 79 SLAs on the SEIFA Index⁷ for disadvantage and contains pockets of relative disadvantage within the SLA. However, when broken down into a Census Collection District level, only 15% of collection districts within a 2.5km radius of the Hotel are in the first quintile of disadvantage indicating more limited levels of disadvantage in the area around the Hotel. Indeed, both parties agreed that the area was not acutely disadvantaged.

⁴Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation [2009] VCAT 2275, [247] – [249]

⁵An SLA is a general purpose spatial unit. It is the base spatial unit used to collect and disseminate statistics by the Australian Bureau of Statistics.

⁶Pursuant 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.

⁷Socio-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.



THE EVIDENCE BEFORE THE COMMISSION

11. Both the Applicant and the Council provided the Commission with helpful and comprehensive written evidence to establish the economic and social impacts that approval of the application would bring to the municipality.
12. While the Council chose not to appear, the Commission took careful note of its comprehensive and useful submission and put questions to the Applicant based on the Council's submission. The Council provided a detailed written Social and Economic Impact Assessment (**SEIA**), which included both a Community Survey and a research report entitled *Local Impacts of Electronic Gaming Machine (EGM) Gambling in Moreland*. The preparation of these materials was of assistance to the Commission in reaching its decision in this matter, both in terms of their content and the framework they provided for consideration of the issues. No doubt the materials will also assist the Council in its management of gaming impacts in its municipal district.
13. That said, it is regrettable that the Council was unable to attend the Commission's inquiry on 15 November. Had Council appeared, it might have been possible for the Commission to elucidate its written evidence more fully. As it is, however, the weight given to the uncontested evidence must be moderated.
14. Nonetheless, bearing in mind the inquisitorial nature of the inquiry, the Commission was careful to put the material contained in Council's SEIA to relevant witnesses and to ensure that the issues raised in the written evidence were properly considered.
15. In addition to the written evidence before the Commission, the Applicant called oral evidence from a number of persons:
 - a. Ms Colleen Peterson, a director of Ratio Consulting. Ms Peterson was the author of a Social and Economic Impact Statement and Addendum relied upon by the Applicant to establish the likely impact of the proposal.
 - b. Mr Richard Whitehouse, a partner at PVS Australia Pty Ltd, Mr Whitehouse spoke to a predicted expenditure report which he had prepared, estimating the level of new spending likely to be produced by the application.
 - c. Mr Gianni Grollo, a director of Gida Construction Pty Ltd. Mr Grollo gave evidence regarding the expected impact of approval on the Hotel.
 - d. Mr Leigh Barrett, an independent consultant on gaming matters. Mr Barrett gave evidence regarding responsible service of gaming at the Hotel.



16. Having regard to Council's written evidence, the evidence of Mssrs Whitehouse, Grollo and Barrett appears to have been largely uncontroversial and so we do not set it out. Nothing in the evidence provided by the Council took issue with:

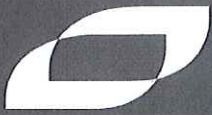
- a. The expenditure estimates provided by Mr Whitehouse;
- b. The benefits that Mr Grollo suggested would arise from the grant of the application (although Council submitted that these benefits were overstated and were 'far outweighed' by the disbenefits of the application); or
- c. Mr Barrett's evidence that the Hotel would be responsibly run in such a way as to minimize the risk of problem gambling.

17. Instead, Council focused its opposition on the four key concerns relating to the location of the venue. In its written material, Council identified its four 'key concerns':

- a. The venue's accessible, convenient location in the Coburg Principal Activity Centre where people gather for daily activities including work, school, retail and health.
- b. The location of the venue is proximate to major health and social service providers and therefore is likely to attract people who are vulnerable to gambling harm and problem gambling who attend these services in central Coburg.
- c. Priority populations likely to visit the Hotel's vicinity who are of concern include problem gamblers, people with mental health issues, people with financial difficulties, older people and people of Culturally and Linguistically Diverse (CALD) background.
- d. The venue has very high per machine expenditure. Increased accessibility to EGMS at this venue is therefore likely to contribute to even higher expenditure levels.

18. The Commission put each of these matters to Ms Peterson to get her response. As Ms Peterson explained it, her approach was to focus on the marginal impact of the new machines at the Hotel and to consider whether and to what extent those machines would make the Hotel more attractive to persons likely to be problem gamblers. Overall, given the application would result in an increase of only 7 EGMS, her view was that the additional machines would have a negligible impact on the attractiveness of the Hotel and hence the risk it presents to potential problem gamblers.

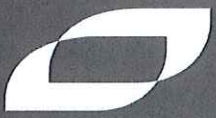
19. The Commission accepts this is the correct approach. As Morris P emphasised in *Branbeau Pty Ltd v Victorian Commission on Gambling Regulation*, the test of no net social detriment



requires a focus on the marginal impact of a proposal.⁸ If this were an application to introduce 35 EGMs in a new venue on the site of the Hotel, there might be more appreciable grounds for concern. In the present case, however, given that gambling is already established at the Hotel, it is difficult to see that the addition of a relatively small number of new EGMs will make the Hotel materially more attractive to problem gamblers.

20. Moreover, whilst the Commission accepts the Hotel is within the Coburg Principal Activity Centre, it also accepts Ms Peterson's evidence that the Hotel is situated north of the main activity areas and that there is less reason for a person to walk past the Hotel simply in the course of their daily activities.
21. In relation to the issue of the high level of expenditure at the venue, the Commission is satisfied that this is explained by the relative lack of other nearby gaming venues. As Ms Peterson explained, there are only four venues with a 2.5 km radius of the Hotel and two of those are at the periphery. As such, it is to be expected that the Hotel will have above average levels of gaming expenditure, since it is likely to have something of a localised monopoly on gaming expenditure in the nearby activity centre.
22. The Commission is satisfied, having regard to the various issues raised, that the net social and economic impact of the application is likely to be neutral. This is an application for a relatively small increase in the number of EGMs at an existing venue. The general environment around the Hotel is not unusual and, as the parties agree, it is not experiencing high levels of disadvantage. To the extent the Hotel is proximate to various support services for people who might be at elevated risk of problem gambling, we are satisfied, for the reasons given by Ms Peterson, that the increase being considered in this case is unlikely to materially affect the risk of problem gambling at the Hotel. The same holds true in respect of the vulnerable populations identified by Council.
23. To the extent that any increase in EGMs numbers might be argued to result in an increase in the risk of problem gambling, we are satisfied, on the evidence of Mr Barrett and Mr Grollo, that the Hotel is well placed to manage that risk. We also note that Moreland has below average gaming expenditure and is experiencing an above average declining trend in real gaming expenditure per head. This suggests the risk of problem gambling in Moreland may be declining, to the extent that problems are in proportion to overall expenditure.

⁸ [2005] VCAT 2606, [47]

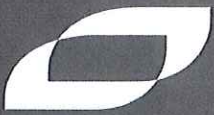


THE COMMUNITY SURVEY

24. Council also placed weight upon a community survey it had commissioned that indicated broad community opposition to the grant of the amendment.
25. Council commissioned Wallis Consulting Group to carry out a survey of community attitudes towards EGMs and the proposed additional 7 EGMs at the Hotel in particular.
26. The judgment of the Court of Appeal in *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* makes clear that community attitudes are a relevant consideration in determining the net impact of additional EGMs.⁹ Surveys are evidence of such attitudes.
27. The weight to be accorded to survey evidence will depend on a number of factors. Three obvious issues are how the survey has been constructed, how it has been conducted and the nature of the questions asked. In this case, the Commission considers that the survey conducted by the Wallis Consulting Group is of a high quality and asked appropriate questions.
28. In particular, the Commission notes the survey specifically asked respondents whether, if poker machines were installed at The Brown's Corner hotel, it would affect their happiness and sense of wellbeing about living in Moreland.¹⁰ This is obviously an important question yet, as Ms Peterson observed in her oral evidence, it is not a question that normally gets asked.
29. The answers to the question are revealing. 61% of respondents said that the introduction of additional EGMs at the Hotel would have no impact on their happiness. 75% of respondents said that the introduction of additional EGMs would have no impact on their sense of wellbeing.
30. Similarly, when asked about the impact of the additional EGMs on their immediate neighbourhood, 58% of all respondents said that it would have no impact. Respondents in Coburg itself were more equivocal. 47% of respondents considered that the introduction of additional EGMs would have a negative impact, compared to 46% who considered it would have no impact and 3% who considered it would have a positive impact.
31. The Commission also notes that, when respondents were asked about why they considered the additional EGMs would have a negative impact, one of the main responses given was 'a general dislike of poker machines'. This is not a matter which the Commission can take into account, as the Victorian Civil and Administrative Tribunal recently emphasised in *Bendigo Stadium Pty Ltd v Greater Bendigo CC*.¹¹

⁹(2008) 19 VR 422, 434

¹⁰We note that this question appears to suggest that EGMs had not previously been installed at the Hotel. At the same time, it is clear from other questions that the survey was conducted on the basis that there were already EGMs at the Hotel.



32. For these reasons, the Commission accepts the findings of the survey. It considers, however, that those findings do not establish that the introduction of additional EGMs at the Hotel will have an appreciable social impact, negative or positive. Rather, a majority of people feel that the additional EGMs will simply not affect them. This is obviously a far cry from the situation in *Romsey*.¹²
33. Another factor that must be taken into account in assessing the weight to be given a community survey is the issue of 'revealed' versus 'stated' preferences. There is a risk that respondents, faced with a survey about a socially charged topic, will give what they perceive to be the 'right' answer, rather than expressing their actual view. In this case, the Commission notes that 23% of respondents have used EGMs in the past year. This suggests that, the additional EGMs at the Hotel may meet an appreciable consumer need.

CONCLUSION

34. 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.¹³
35. The Commission has considered the likely social and economic impacts of the proposal and considered that those impacts are on balance likely to be neutral.
36. 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 36 paragraphs are a true copy of the Reasons for Decision herein of
Mr Mark Brennan, Chair and Mr Robert Kerr, Commissioner.**

¹¹[2012] VCAT 1698, [57]

¹²*Romsey* (2008) 19 VR 422,

¹³*Romsey* (2008) 19 VR 422, 435.