



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 Greyhound Promotions Pty Ltd for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises, Greyhounds Entertainment, Lightwood Road, Springvale from 93 to 102 gaming machines.

Commission

Miss Gail Owen, Deputy Chairman

Mr Robert Kerr, Commissioner

Appearances

Mr Paul Chiappi of Counsel for the Applicant (instructed by Tresola Legal)

Mr Cameron Warfe as Counsel Assisting the Commission

Date of Hearing

5 May 2014

Date of Decision

13 May 2014

Decision

The application is refused.

Signed

A handwritten signature in blue ink, appearing to be 'Gail Owen'.

Gail Owen

Deputy Chairman



REASONS FOR DECISION

INTRODUCTION

1. This is an application by Greyhound Promotions Pty Ltd (**the Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at Greyhounds Entertainment, Lightwood Road, Springvale (**the Venue**) from 93 to 102 EGMs.
2. The relevant municipal authority is the Greater Dandenong City Council (**the Council**). On 21 March 2014, the Council informed the Victorian Commission for Gambling and Liquor Regulation (**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.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

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**).



5. In addition to the requirements under the Act, the Commission has an unfettered and overriding discretion to grant or refuse an application, subject to the condition stipulated in the Act that requires that the Commission not grant an application unless it is satisfied that the net economic and social impact of approval is not detrimental to the wellbeing of the municipality in which the premises are located.

THE CITY OF GREATER DANDENONG AND GREYHOUNDS ENTERTAINMENT

6. The City of Greater Dandenong (**Greater Dandenong**) is a metropolitan Local Government Area (**LGA**) located approximately 30 kilometres south-east of Melbourne and includes the major suburbs of Dandenong, Springvale and Noble Park. In terms of social and economic disadvantage, Greater Dandenong is characterised by high levels of disadvantage, above average unemployment and below average household income.
7. Greater Dandenong is comprised of two Statistical Local Areas (**SLA**),⁴ Greater Dandenong – Dandenong and Greater Dandenong – Balance. The Venue is located within the Greater Dandenong – Balance SLA, approximately 1km from the retail core of Springvale along Springvale Road.
8. The Greater Dandenong – Balance SLA is ranked 2nd of the 79 metropolitan SLAs on the SEIFA scale of disadvantage,⁵ indicating a very high level of disadvantage in the area in which the Venue is located. It is generally accepted that a majority of a venue's gaming patrons will be drawn from residences within a 2.5km radius of the venue. Notably, 92% of Statistical Area Level 1 (**SA1**) within a 2.5km radius of the Venue is in the first quintile of disadvantage (relative to all Victorian SA1s) and a further 7% is in the second quintile of disadvantage, which suggests that a large portion of the Venue's patrons are likely to be significantly disadvantaged. The Commission notes that there are six other gaming venues operating within this radius of the Venue.
9. Greater Dandenong is subject to a regional cap of 989 EGMs.⁶ Currently there are fifteen gaming venues in Greater Dandenong with approvals to operate a total of 978 EGMs.⁷ Greater Dandenong is characterised by above average gaming statistics, with:

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.

⁵ Socio-Economic Indexes for Areas (SEIFA) is a product developed by the ABS to assist in the assessment of the welfare of Australian communities. SEIFA allows the ranking of regions/areas, providing a method of determining the level of relative social and economic well-being in each region. The SEIFA scale of disadvantage ranks municipalities from least disadvantaged to most disadvantaged on a relative basis.

⁶ Pursuant to s 3.4A.5(3A)(b) of the Act, the Commission 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.



- 9.1. a density of 8.42 EGMs per 1,000 adults (52% greater than the metropolitan average and 45% greater than the State average);
 - 9.2. expenditure for the 2012-13 financial year of \$109.3 million; and
 - 9.3. annual expenditure per adult of \$987 (70% greater than the metropolitan average and 79% greater than the State average).
10. Despite Greater Dandenong's above average gaming statistics, expenditure in the municipality is declining and has decreased by 19.1% in real terms⁸ over the last five years. Declining expenditure is common in metropolitan municipalities, and it is noted that expenditure is declining at a similar rate to the metropolitan average across Victoria (18.5%).
 11. At the hearing of the application, the Applicant did not dispute the concerning level of disadvantage within the municipality and areas surrounding the Venue. Similarly, the Applicant accepted that Greater Dandenong's gaming statistics are, on the whole, well above the State and metropolitan averages.
 12. The Venue is part of the Sandown Park Greyhound Complex and consists of a large bistro, function room, café/bar area, TAB facilities and gaming room. The gaming room currently operates 93 EGMs and has sufficient room to accommodate an additional 9 EGMs.
 13. The Venue operates under a trust, the beneficiaries of which are the Sandown Greyhound Racing Club and the Melbourne Greyhound Racing Club (the operator of the second metropolitan greyhound racing complex, The Meadows, located in Broadmeadows). The two clubs have an equal share in the trust and receive equal distributions of surplus revenue from the operation of the Venue, which is used to maintain, upgrade and improve the facilities of both clubs.
 14. Both clubs are members of Greyhound Racing Victoria (**GRV**), the statutory body in control of greyhound racing in Victoria. The clubs contribute funds to the GRV to support and grow the sport of greyhound racing in Victoria through the conduct of race meetings at metropolitan and country locations, as well as charitable events and activities. As a result, the surplus revenue from the Venue supports and enables (in part) the activities of both clubs and, ultimately, the GRV.

⁷ This includes the recent approvals for EGM increases at the Noble Park RSL (from 30 to 35) and the Albion Hotel (from 24 to 30).

⁸ Indexed to CPI



THE MATERIAL BEFORE THE COMMISSION

15. The Applicant provided the Commission with the following material to assist it in assessing the social and economic impact of the application:
 - 15.1. Socio-Economic Impact Assessment, prepared by Mr Rhys Quick of Urbis Pty Ltd, dated February 2014;
 - 15.2. Gaming Expenditure Estimate Report, prepared by Mr Tim Stillwell of Moore Stephens Accountants & Advisors, dated 20 December 2013; and
 - 15.3. Witness Statement of Peter Johnson, General Manager – Strategy & Development of Greyhounds Entertainment, dated 10 February 2014.
16. Additionally, the following material, prepared by Commission officers, was considered by the Commission:
 - 16.1. a statistical report titled Economic and Social Impact Report dated May 2014; and
 - 16.2. a compliance report titled Pre-Hearing Inspection and Compliance Report dated 17 April 2014.

Mr Peter Johnson

17. The Applicant called Mr Peter Johnson to give evidence as to the operations of the Venue and the level of community contributions made by the Applicant.
18. Mr Johnson has over 20 years experience in the gaming industry in Victoria. He has been General Manager of the Venue since October 2013 and is responsible for overseeing the operations of the Venue and management of its 50-60 staff. The majority of staff are local residents and a number are bilingual in English and Vietnamese. The Venue has experienced a low turnover of staff resulting in the retention of patron knowledge and gaming experience.
19. Mr Johnson told the Commission that all surplus revenue of the Applicant is distributed to the Sandown Greyhounds Racing Club and the Melbourne Greyhound Racing Club in equal shares. The surplus revenue is the money remaining once all operating expenses of the Venue (including cash and in-kind community contributions) have been accounted for.
20. Mr Johnson gave evidence that the Applicant provides the following cash and in-kind contributions to the community:



- 20.1. a wide variety of discounted seniors meals;
 - 20.2. the organisation of members' nights and provision of members' discounts;
 - 20.3. support to the Police Association and Fire Brigade Association through donations to and inclusion in the published community directories (although it was conceded this involved a level of promotion for the Venue);
 - 20.4. free use of its function room to all groups, however food and beverage service are charged; and
 - 20.5. following distribution of surplus revenue to the trust's beneficiaries, a number of charitable events organised by the Sandown Greyhound Racing Club, the Melbourne Greyhound Racing Club and GRV.
21. The Applicant is also planning to upgrade the interior of the Venue through refurbishment works with an estimated cost of \$100,000. These refurbishment works could be delayed if the application is not approved.
 22. In terms of responsible service of gaming, Mr Johnson told the Commission that the Applicant has adopted and enforces the Clubs Victoria Responsible Gambling Code of Conduct and Self-Exclusion Program. Mr Johnson has also introduced a number of additional measures (e.g. restrictions on the ability to play multiple EGMs simultaneously, no loitering around EGMs to prevent group encouragement to continue playing) at the Venue to mitigate the risk of problem gambling, although he conceded that some of the measures were difficult to maintain with some patrons at times.
 23. Mr Johnson told the Commission that there are at least four staff members on the gaming floor at any one time and all staff are required to have current Responsible Service of Gambling certificates.
 24. According to Mr Johnson, there are approximately 15-20 persons self-excluded from the Venue, with approximately 30% of these exclusions originating at the Venue. Despite an isolated incident occurring in May 2013, Mr Johnson was not aware of any other gaming issues at the Venue and did not believe there to be any concerns regarding problem gambling.
 25. Mr Johnson told the Commission the Venue is in regular contact with the local Gambler's Help and a representative visits the Venue every two or three months to discuss opportunities to provide information or programs for patrons on a variety of topics and conduct staff training as



required.

26. Mr Johnson explained to the Commission that the recently announced increased tax rates for gaming machine revenue would have a significant impact on the ability of the Venue to contribute funds to the community and the racing clubs. Mr Johnson estimated that the Venue's tax liability would increase by approximately \$425,000 per annum if the application were refused. However, as the additional 9 EGMs would dilute the income per EGM, the Venue's tax liability would only increase by approximately \$290,000 per annum if the application were approved, a reduction of \$135,000 per annum. The Venue would use these "savings" to maintain current staff levels and preserve the current levels of community contributions and distribution to the trust's beneficiaries.
27. Mr Johnson noted that, while the Government would permit the minimum Return to Player (RTP) to be reduced from 87% to 85% to assist venues pass on the tax increase to patrons, he had advised the Applicant's board against lowering the RTP at the Venue (currently at 91.8%) as:
 - 27.1. it would have a negative impact on patron loyalty and there was a risk of patrons choosing another venue given the competitive local area; and
 - 27.2. there was a significant cost in reducing the RTP on the Venue's current EGMs (either by upgrading software or replacing EGMs that were not able to be upgraded) which would negate the impact of taking such a measure.

The Moore Stephens Report: Mr Tim Stillwell

28. The Applicant engaged Mr Tim Stillwell to provide an estimate of the expenditure that would be generated by an additional 9 EGMs at the Venue. The Moore Stephens Report is based on a peak utilisation analysis which is used to estimate likely EGM expenditure in gaming venues based on actual EGM usage rates and anticipated increase in trade if the application were granted. This method has been presented as evidence and accepted by the Commission previously.
29. Mr Stillwell told the Commission that, on the basis of the peak utilisation analysis:
 - 29.1. an additional 9 EGMs at the Venue would result in increased expenditure of between \$125,127 and \$152,933;
 - 29.2. of this expenditure, approximately 70% would be transferred from other gaming venues within Greater Dandenong;



- 29.3. the impact of transferred expenditure would be spread amongst many gaming venues, including Highways Sandown, Noble Park Football Social Club, Sandown Park Hotel, Noble Park RSL and the Waltzing Matilda Hotel; and
- 29.4. after taking into account expenditure transferred from gaming venues within the municipality, it is predicted that gaming expenditure would rise by between \$37,538 and \$45,880 in Greater Dandenong in the first twelve months of operation.
30. As the estimated increased expenditure was based on the number of trading hours at peak utilisation, Mr Stillwell accepted that if the patron survey figures (over two weeks) were not representative of the total number of trading hours at peak utilisation, the increased expenditure could be higher or lower.
31. Mr Stillwell did concede that, although the average change in gross gaming expenditure in Greater Dandenong had decreased by 1.17% annually over the previous five years, the Venue had achieved an average increase in gross gaming expenditure of 4.52% over the same period. Mr Stillwell told the Commission that the Venue is, and would most likely continue to be, a popular venue and was "outperforming the market" given its club atmosphere in comparison with nearby hotels.
32. The Commission accepts the above figures to be a reasonable assessment of estimated increased expenditure in this case.

Urbis Report: Mr Rhys Quick

33. The Applicant engaged Urbis to prepare a social and economic impact statement to accompany the application. Mr Quick gave evidence at the hearing of the application and was cross-examined. The Commission accepts that Mr Quick is qualified to give expert opinion on the likely social and economic impacts of this application.
34. Mr Quick told the Commission that this was not a case where approval of the application would result in large capital expenditure or a significant increase in employment, but was one of strengthening the financial position of the Applicant so that its current level of community contributions could be maintained in the face of recently announced changes to the taxation of gaming machine revenue.
35. In relation to community contributions, Mr Quick told the Commission that the Applicant has provided cash donations to local charities and organisations on an ad hoc basis up to a maximum of \$10,000 each year. The Applicant now intends to donate \$10,000 each year to the Springvale Rotary group to distribute to local community groups and activities at its



discretion.

36. Mr Quick confirmed that Greater Dandenong has the lowest SEIFA score of all Victorian LGAs and that the area immediately surrounding the Venue⁹ was highly disadvantaged. He also noted that the provision of EGMs was very high, and the average expenditure per adult was well above the State average.
37. However, Mr Quick told the Commission that the impact of this application on accessibility and expenditure within Greater Dandenong would be very small. The estimated increase in expenditure would represent between 0.03% and 0.04% of the municipality's total gaming expenditure, equating to \$1-\$2 per adult.
38. Mr Quick told the Commission that the additional revenue that would be gained from an additional 9 EGMs would be returned to the community through the operation of the racing clubs, local contributions or enhancing the broader contribution of GRV.
39. In Mr Quick's opinion, the impact of the approval of the application on problem gambling within the municipality would be low due to the following factors:
 - 39.1. Greater Dandenong is a mature gaming market with high levels of gaming density and EGM accessibility so that an additional 9 EGMs at the Venue will result in no more than a marginal increase in accessibility and density;
 - 39.2. the Venue is a destination venue and an increase of less than 10% will not induce any further "convenience" gaming;
 - 39.3. although the demographic profile of the immediately surrounding area indicates a significant level of disadvantage, this does not increase the risk of problem gambling (only that the consequences of any increase in problem gambling can be more serious);
 - 39.4. an increase in gaming expenditure does not necessarily translate into an increase in problem gambling; and
 - 39.5. the Applicant is an experienced gaming operator with appropriate responsible service of gaming policies and procedures that will mitigate against instances of problem gambling.

⁹ In the Urbis report, Mr Quick used a 5km radius around the Venue in his assessment of the local surrounding area. Mr Quick conceded that a radius of 2.5km was more appropriate for metropolitan venues and should have been used in his assessment. However, he noted that there would have been no major differences in his overall assessment of the local surrounding area had he used the 2.5km radius.



40. In summary, Mr Quick concluded that approval of this application would not have a detrimental social or economic impact on the community of Greater Dandenong.

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 Venue of between \$125,127 and \$152,933 in the first 12 months of operation. The Commission also accepts that the majority of this expenditure will be transferred from other venues within the municipality. The Commission considers that the predicted transfer percentage of 70% to be not unreasonable in this case.
43. Accordingly, it can be expected that approximately 30% or between \$37,538 and \$45,880 of the predicted increase in expenditure at the Venue will be new expenditure. In the context of a municipality with a high gaming machine density and high levels of gaming expenditure, such an increase is relatively small. The Commission considers that this new expenditure is likely to include expenditure received from both responsible gaming (a benefit) and problem gaming (a disbenefit). The Commission considers there will only be a nominal economic benefit associated with increased expenditure for this application.
44. In relation to community contributions, the Applicant's evidence indicates that not only does the Venue contribute directly to the community (see paragraphs 20.1 to 20.4 above), but also enables the trust's beneficiaries, and indirectly, GRV, to provide community contributions from the distribution of the Venue's surplus revenue. The Applicant indicates that these community contributions could be adversely affected without the increased revenue and tax savings the grant of this application would provide.
45. The Commission finds that the community contributions directly provided by the Applicant are limited in nature and built into the business model of the Applicant to attract its desired patronage to the Venue. As such, the Commission considers that these contributions are unlikely to be affected by the outcome of this application, and therefore places little weight on these contributions.
46. While approving the application may positively impact the Applicant's surplus revenue, the Commission finds that much of the increased revenue will be dissipated and not provide a



significant additional benefit to the relevant community. The Commission notes that 50% of all surplus revenue is distributed to the Melbourne Greyhound Racing Club, which holds no benefit to the relevant community for this application. Furthermore, the Commission considers that the charitable events and activities run by the Sandown Greyhound Racing Club (e.g. McGrath Foundation and Prostate Cancer Fundraising event, Fifty Shades of Greyhound event, and the 2014 Club Challenge Series) and GRV (e.g. the Greyhound Adoptions Program, the Great Chase series, the "Go the Pink Dog!" initiative and donation to the Royal Children's Hospital Appeal), while highly commendable, are generic charity activities and only a small benefit could be said to be derived by the relevant community. Overall, the Commission finds that the application will have, at best, a marginal economic benefit to the relevant community through the distribution of surplus revenue.

47. The Commission finds that the Applicant's claim of an economic benefit through increased government revenue is unsustainable given that the Applicant's tax liability would actually decrease if the application were successful. Although the decreased government revenue could be seen as an economic detriment, the Commission finds that any decrease would have very little impact on the municipality (given any reduction would be split across all municipalities) and places no weight on this point.
48. The Commission considers the scope of the proposed refurbishment to the Venue to be limited in circumstances where the estimated cost of the refurbishment (\$100,000) is about the same as the average annual expenditure for the Venue's maintenance (estimated by Mr Johnson as \$120,000 per annum). As such, the Commission does not consider the proposed refurbishment will provide an appreciable economic benefit to the relevant community.
49. In terms of the economic costs presented by the Applicant, the Commission considers the approval of the application is likely to result in a small loss of gaming revenue for a number of gaming venues, and a potential diversion of trade from other businesses in the area. However, the Commission notes that the predicted losses are essentially transfers without net cost, and in any case are minimal and therefore unlikely to impact the financial position of other gaming venues or local businesses.
50. However, the Commission is concerned about the highly disadvantaged nature of the area immediately surrounding the Venue. The Commission accepts that it is difficult to assign any exact share of increased expenditure to problem gambling, or to assess any increase in problem gambling with certainty. Despite this, the Commission considers that the consequential impact of any increase to gambling expenditure will be greater in this case (in



light of the above average unemployment and gaming expenditure per 1,000 adults, combined with the below average household income) as compared with a similar increase in gambling expenditure in a less disadvantaged area.

51. Accordingly, the Commission places increased weight on the likely costs of this application relating to increased gambling expenditure attributable to problem gambling and the economic costs associated with problem gambling.
52. Overall, the Commission considers that there would be a neutral economic impact on the community if the application were to be approved.

LIKELY SOCIAL IMPACT OF APPROVAL

53. While refurbished facilities at the Venue will constitute a social benefit for its members and patrons, the Commission considers that the proposed refurbishment will not be jeopardised if this application is not approved. While it accepts that the proposed refurbishment to the Venue may be delayed if this application is not approved, the Commission is not satisfied that the works are tied to this application and as such, considers that the refurbishment of the Venue will, ultimately, occur regardless of the outcome of this application. The Commission therefore places little weight on this social benefit.
54. The Commission accepts that approval of this application will result in a small increase to accessibility. Wherever accessibility to EGMs is increased, there is always a risk of an increase in problem gambling. Even though it can be argued that the gambling market has matured and the Venue is a destination venue, this concern cannot, in the Commission's view, be entirely set aside in this case.
55. A key concern in this matter is the significant level of disadvantage evident in the immediately surrounding area of the Venue. The evidence that 99% of SA1s within a 2.5km radius of the Venue are in the 1st or 2nd quintile was unchallenged before the Commission. Whilst this is not determinative in itself, this factor increases the risk profile of the surrounding area, and it is not apparent that this risk is held in check given the above average gaming expenditure in this community.
56. As noted above, the Commission accepts that Greater Dandenong is amongst the most disadvantaged municipalities in Victoria, with gaming statistics that are well above the metropolitan and State averages. Such factors are warning signs and suggestive of a municipality where problem gambling may be prevalent and the impacts of problem gambling greatly felt, which leads to other disbenefits such as lost productivity, increased health and



social service requirements and other social costs.

57. The Commission finds that there is an increased risk of problem gambling at the Venue given the profile of the surrounding area. The Commission accepts that the Applicant has appropriate responsible service of gaming measures in place, but notes that these measures will not be enhanced to meet the higher risk of problem gambling found to accompanying this application.
58. The Commission considers that, given the overwhelming disadvantage in the area, there will likely be a moderate detrimental social impact on the community if the application were to be approved.

CONCLUSION

59. 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 wellbeing of the relevant community will be either neutral or positive.¹⁰
60. The Commission acknowledges that many of the impacts identified as resulting from this application are marginal (both positive or negative), reflecting the small number of requested EGMs and the small, estimated, increase in gaming expenditure. Despite this, the no net detriment test is still to be applied and, if the balance is considered negative, the application must be refused.
61. After consideration of all the evidence presented in this matter, the Commission cannot be satisfied that there would be no net social and economic detriment to the immediately surrounding area or the wider community of Greater Dandenong. The application is therefore refused.

The preceding paragraphs are a true copy of the Reasons for Decision herein of Miss Gail Owen (Deputy Chairman) and Mr Robert Kerr (Commissioner).

¹⁰ Romsey (2008) 19 VR 422, 435.