



Victorian Commission for Gambling and Liquor Regulation

DECISION AND REASONS FOR DECISION

In the matter of an application by Isle of Wight Hotel Pty Ltd under section 3.3.4(1) of the *Gambling Regulation Act 2003* for approval of the premises, the Continental Hotel, 5-8 the Esplanade, Cowes as suitable for gaming with twenty-seven (27) electronic gaming machines.

Commission:

Miss Gail Owen, Deputy Chairman
Ms Kate Hamond, Commissioner

Appearances:

Mr Nicholas Tweedie of Counsel for the Applicant
(instructed by Madgwicks Lawyers)

Mr Peter O'Farrell for the Bass Coast Shire Council
(instructed by Harwood Andrews Lawyers)

Mr Bronte Campbell as Counsel Assisting the Commission

Decision:

That the application be granted

Date of Decision:

17 January 2013

Signed:

Gail Owen
Deputy Chairman



REASONS FOR DECISION

BACKGROUND

1. This is an application by Isle of Wight Hotel Pty Ltd (**Applicant**) for the approval of the Continental Hotel at 5-8 the Esplanade, Cowes (**Premises**) as suitable for gaming with 27 electronic gaming machines (**EGMs**).
2. The relevant municipal authority is the Bass Coast Shire Council (the **Council**). The Council provided the Commission with a written submission in opposition to the application and was represented at the hearing.
3. On the morning of the hearing, the Commission was advised that the Applicant and Council had agreed that the Council would withdraw its opposition to the application and, should the premises approval application be granted, the Applicant would:
 - 3.1. annually provide \$34,000, indexed to CPI, to a community support fund;
 - 3.2. work with the Council to identify which organisations in the community would receive distributions from the community support fund; and
 - 3.3. reduce the number of EGMs at the Premises to 25 by 2016.
4. The parties provided the Commission with evidence of this position in the form of a written agreement made pursuant to section 173 of the *Planning and Environment Act 1987*. Having regard to the agreement reached between the parties, the Commission permitted the Council to withdraw its opposition to the application and be excused from the hearing of the application.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

5. 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

¹ See: s 1.1(2) of the Act.



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

6. The Commission is given discretion to grant or refuse an application, even where it is satisfied of the matters in section 3.4.20(1). However, the Act provides no specific guidance as to the matters that the Commission should take into account when exercising its discretion. Accordingly, it is a matter for the Commission to determine the relevant considerations in light of the subject matter, scope and purpose of the Act.³
7. 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.⁴

THE CONTINENTAL HOTEL AND THE BASS COAST SHIRE

8. The Shire of Bass Coast (**Bass Coast**) is a rural Local Government Area located approximately 120 kilometres south-east of the Melbourne CBD and includes the major regional centres of Inverloch, Cowes and Wonthaggi. Bass Coast occupies two Statistical Local Areas⁵ (**SLAs**), Bass Coast – Phillip Island and Bass Coast – Balance. The Premises is located in Cowes, at the northern end of Phillip Island and in the Bass Coast – Phillip Island SLA.
9. Bass Coast is subject to a regional cap of 216 EGMs⁶ and, at the 2010 Gaming Entitlements Auction (**the Auction**), 216 entitlements were purchased. Currently, there are 6 gaming venues in Bass Coast with approvals to operate up to 216 EGMs. However, only 174 EGMs are presently operating within the municipality. The Applicant purchased 27 entitlements at the Auction.
10. Bass Coast has an average of 6.59 EGMs per 1,000 adults which is 30% more than the rural average and 15% more than the State average. Expenditure on EGMs in Bass Coast for the

² See: *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [247] (Bell J).
³ *Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24, 39-40 (Mason J).

⁴ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, 435 (“Romsey”).

⁵ An 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.

⁶ Pursuant to section 3.4A.5(3A)(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.



2011-2012 financial year was \$19,134,356 which equates to an average expenditure per adult of \$724.

11. The Bass Coast – Phillip Island SLA is ranked 26th out of the 84 rural SLAs on the SEIFA Index⁷ for disadvantage, indicating that Phillip Island shows little sign of relative disadvantage. When broken down into a Census Collection District level, 19% of collection districts within a 5km radius of the Premises are in the first quintile of disadvantage indicating that there are pockets of significant disadvantage in the areas surrounding the Premises. While there are some areas of disadvantage within Phillip Island, the Commission considers that, when compared with other rural SLAs, Phillip Island presents as a relatively affluent area.
12. The Premises is located on the Esplanade of Cowes, the main township of Phillip Island, overlooking the foreshore and opposite the site of the former Isle of Wight Hotel which was destroyed by fire in 2010. The Applicant was the owner and operator of that hotel before it was destroyed. The Isle of Wight Hotel had been approved as a gaming venue and had operated 10 EGMs since 1994.

THE MATERIAL BEFORE THE COMMISSION

13. The Applicant provided the Commission with extensive material in support of its application, including:
 - a) a title search, plan of subdivision and a certificate of a registered caveat for the address 5-8 The Esplanade, Cowes, Victoria;
 - b) an application for a planning permit for the Continental Hotel, Cowes, prepared by Urbis Pty Ltd, dated May 2012;
 - c) a set of current and proposed floor plans for the Premises;
 - d) a Social and Economic Impact Assessment, prepared by Urbis Pty Ltd, dated May 2012;
 - e) an Expenditure Report prepared by Progressive Venue Services dated May 2012;
 - f) a copy of the Liquor Licence No. 31907352 and attached red-line plan;
 - g) a copy of the Liquor Licence No. 32207357 and attached red-line plan;
 - h) a Witness Statement of David Gearing, undated; and
 - i) a copy of the Tabcorp Responsible Gambling Code of Conduct, dated March 2009.

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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.



14. Additionally, the Commission considered an Economic and Social Impact Report dated November 2012 prepared by VCGLR staff.

Social and Economic Impact Statement - Urbis

15. Mr Rhys Quick, a director of Urbis Pty Ltd, gave evidence and was cross-examined on the report which he had prepared. The Commission has regularly accepted that Mr Quick is qualified to give an opinion on the likely social and economic impacts of an application to use EGMs.
16. Mr Quick told the Commission that should this application not be approved, the entitlements purchased by the Applicant would be placed on the entitlement transfer market where it is likely that they would be purchased by the Inverloch Hotel, which currently has approval to operate 17 EGMs but did not purchase any entitlements at the Auction. Therefore, Mr Quick suggested that a key benefit of this application would be guaranteeing the transfer of 17 EGMs out of Inverloch to Cowes, which is a considerably less disadvantaged area when compared with Inverloch.
17. Mr Quick stated the principal economic and social benefits of the application to be:
- a redistribution of EGMs within the municipality which would see 17 EGMs transferred from an area of high disadvantage to an area exhibiting less signs of disadvantage;
 - annual contributions of \$34,000, indexed to CPI, to a community support fund to support local community groups;
 - an additional two full-time equivalent and four part-time staff positions at the Premises; and
 - an additional revenue stream that will allow the Applicant to accumulate funds to be used for large-scale redevelopments of the Continental Hotel and Isle of Wight sites.
18. In Mr Quick's opinion the likely impact of the approval of this application on problem gambling in the Bass Coast Shire will be minimal due to the following factors:
- there will not be an increase in the number of EGMs above the regional capped number of 216 EGMs;
 - the Premises will, in effect, replace the Isle of Wight as a gaming venue and therefore not increase accessibility to EGMs within Phillip Island;



- residents of Phillip Island already have ready access to EGMs at the nearby Cowes Golf Club and the Phillip Island RSL;
- the statistical profile of the Bass Coast suggests an aging population, and research suggests that the elderly age group is less vulnerable to problem gambling behaviour; and
- the Applicant has experience as a gaming venue operator and has demonstrated a commitment to Responsible Service of Gaming and harm minimisation.

19. In Mr Quick's opinion, the introduction of 27 EGMs into the Premises will not be detrimental to the Bass Coast LGA.

Evidence of likely expenditure

20. The Applicant provided the Commission with an expenditure report prepared by Mr Michael Clyne for Progressive Venue Services Australia Pty Ltd (**PVS**). Mr Clyne was engaged by PVS to critique and analyse the outputs of the Geotech Model which is used to estimate likely EGM expenditure in gaming venues. The Geotech Model is a retail gravity geo-spatial model which has previously been accepted by the Commission.
21. Mr Clyne is a gaming expenditure expert who has appeared before the Commission on numerous occasions and provided the Commission with expenditure estimates based on his own modelling and experience within the gaming industry. The Commission accepts that Mr Clyne is qualified to give an expert opinion on matters of gaming expenditure and to critique the outputs of the Geotech Model.
22. Mr Clyne told the Commission that the Geotech Model predicted that the annual expenditure on the 27 EGMs to be installed in the Premises would be approximately \$2,019,589 of which 82.1% would be transferred from other venues.
23. Mr Clyne told the Commission that, as this application deals with a new gaming venue and there are no actual gaming performance figures available, it is normal to allow for an upper bound confidence level of 75%. In effect, this means that the prediction is adjusted so that there is a greater than 75% chance that the model's output will be equal to or above the actual performance of the EGMs once installed. Mr Clyne's adjusted figures predict the total annual expenditure at the venue on the 27 EGMs to be installed will be approximately \$2,261,940 with a net annual increase (after transferred expenditure from other venues in Bass Coast), within the municipality of \$405,318.



24. In Mr Clyne's opinion, the Geotech Model's predicted transfer rate of 82.1% is overstated and should be reduced to 75% due to a lack of competing venues in the Phillip Island area. Mr Clyne told the Commission that there are two other gaming venues in Phillip Island, the Cowes Golf Club and the Phillip Island RSL, which are well established and offer greater gaming facilities than those proposed by the Applicant. Accordingly, Mr Clyne was of the view that it will be more difficult for the Applicant to draw gaming income away from those venues and therefore, the transfer rate should be discounted.
25. Mr Clyne told the Commission that the Inverloch Hotel, which previously operated 17 EGMs, did not purchase any entitlements at the Auction. As a result, 17 EGMs would be effectively transferred from the Inverloch Hotel to the Continental Hotel. Mr Clyne expected that 80% of the gaming revenue of the Inverloch Hotel would be transferred to gaming venues in Wonthaggi (which are considerably closer than venues at Phillip Island) with the balance of expenditure being removed from the municipality. Taking this into account, Mr Clyne told the Commission that it would be appropriate to consider the expenditure that is being removed from the municipality as a result of the cessation of gaming operations at the Inverloch Hotel as an offset against the increase in expenditure predicted by the Geotech Model. Mr Clyne estimated that the reduction in expenditure would be approximately \$209,000.
26. Mr Clyne also told the Commission that, in terms of measuring the actual impact on the municipality, it was important to consider the considerable tourist trade in Cowes. Mr Clyne gave evidence that, while gaming revenue will increase should this application be approved, a significant portion of the increase in gaming revenue will come from tourists, and not drawn from the local economy. Mr Clyne estimated that, should this application be approved, 25% of the gaming revenue will be drawn from tourists.
27. When taking into account the adjustments to the overall predicted expenditure, discounted transfer rate, anticipated reduction in gaming revenue from the Inverloch Hotel and the revenue derived from tourists, Mr Clyne concluded that should this application be approved, there will be an increase in gaming expenditure by local residents of approximately \$215,114 or an increase in expenditure within the municipality of 2.97%.



The Premises

28. Mr David Gearing, a director of the Applicant, appeared before the Commission to give evidence and was cross-examined. Mr Gearing has over ten years experience in operating hospitality and gaming venues, has managed the Premises since 2007, and managed the Isle of Wight Hotel from 2000.
29. Mr Gearing told the Commission that his family, through the Applicant and its associated companies, own both the Continental Hotel and the Isle of Wight Hotel site. Mr Gearing is a part owner of the Continental Hotel but does not have a direct financial interest in the Isle of Wight Hotel site.
30. Mr Gearing told the Commission that, before the Isle of Wight Hotel was destroyed, his family had planned to redevelop the Isle of Wight site into a large-scale entertainment, hospitality and accommodation facility including gaming with up to 50 EGMs. Mr Gearing gave evidence that while the family still planned to proceed with the redevelopment, the financial impact of the fire and the loss of revenue from the EGMs operating at the Isle of Wight Hotel has meant that the redevelopment is not currently viable. Mr Gearing told the Commission that, should this application be approved, the additional revenue generated by the EGMs will be used to build funding to redevelop the Isle of Wight site while also maintaining the Continental Hotel.
31. Mr Gearing gave evidence that the Continental Hotel previously operated as an accommodation and function centre. However, since the destruction of the Isle of Wight Hotel, the Applicant has transferred the Isle of Wight's dining and TAB facilities to the Continental Hotel. The Continental Hotel now consists of a ground floor, incorporating a bar and grill restaurant, lounge area, public bar and TAB facilities, and the first floor, which contains four function rooms and two balconies.
32. In Mr Gearing's view, the addition of gaming into the Premises will complement the entertainment offering provided at the Continental Hotel. Mr Gearing told the Commission that, should this application be approved, the bar and grill restaurant will be relocated upstairs and a gaming room will be installed in its place. According to Mr Gearing, the upper floor of the Premises has ample room to accommodate the restaurant whilst still offering sufficient and flexible function space. Mr Gearing told the Commission that bistro meals will still be served in the lounge and bar area on the ground floor. Mr Gearing gave evidence that the introduction of gaming at the venue would require an additional two full-time equivalent staff members as well as four part-time staff members.



33. Mr Gearing gave evidence that in the last 12 months, the Applicant has provided approximately \$80,000 in in-kind contributions to local community organisations, schools, retirement homes and services and \$34,000 in cash contributions to local support groups and organisations.
34. Mr Gearing gave evidence that, should this application be approved, the Applicant was committed to doubling its current cash contributions to community groups and would establish a community support fund for community cash contributions to be distributed in conjunction with the Council in accordance with the section 173 agreement referred to at paragraph 4.
35. In terms of responsible service of gaming, Mr Gearing told the Commission that the Applicant and its staff take regulatory responsibilities and obligations seriously. Should this application be approved, Mr Gearing will implement the Commission approved Victorian Gaming Machine Industry Code of Conduct at the venue and ensure that all staff adhere to the Code of Conduct. Additionally, all staff at the Premises, whether or not employed to work in the gaming room, will be required to complete responsible service of liquor and gaming training and licensing.

ECONOMIC AND SOCIAL IMPACT

36. While there is frequently an overlap in the social and economic impacts of applications to operate EGMs, the Commission considers it useful to separately analyse the economic and social impacts of an application before arriving at a net position.⁸

Social Impact

37. Approval of a new gaming venue carries with it an increase in accessibility to EGMs as well as a risk of an increase in problem gambling. This is particularly so when gaming machines are introduced into a municipality which has a low exposure to EGMs or is a particularly disadvantaged community. The Commission does not consider this to be the case in this application.
38. The Premises is located in Cowes, in Phillip Island, which presents as a relatively affluent SLA and has had exposure to EGMs through the nearby Cowes Golf Club and Phillip Island RSL for some time. The Commission considers that, while approval of this application will increase accessibility to EGMs in Cowes, there is already ample opportunity for members of the

⁸ This is consistent with the approach taken by Justice Bell in *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275.



community to use EGMs and, as such, the risk of an increase in problem gambling arising out of the approval of this application is low.

39. Furthermore, the Commission considers this risk to be mitigated by the Applicant's commitment to responsible service of gaming and harm minimisation. The Commission notes that, while the Applicant does not currently operate any gaming venues, it is an experienced gaming operator with a strong compliance history. The Commission has no reason to believe the applicant will not continue to uphold this standard at the Continental Hotel.
40. The Commission considers that the proposed increase in community contributions of \$34,000 will have a slight economic and social benefit to the municipality, and is encouraged by the commitment of the Applicant and Council to work together to ensure the best use of those funds.
41. Overall, the Commission considers that approval of this application will have a neutral or slightly positive social impact on the municipality and local community.

Economic Impact

42. The Commission considers Mr Clyne's gaming expenditure estimates to be reasonable, and is satisfied that this proposal will result in a very modest increase in gaming expenditure in the municipality. Any benefit said to arise from the economic stimulus derived from this increased expenditure is negated to the extent that expenditure derived from problem gambling increases. The Commission accepts that, in this instance, there is unlikely to be any significant increase in economic activity or an increase in problem gambling as a result of the approval of the application.
43. The Commission considers that there will be a benefit to the municipality in the increase in employment numbers at the venue. The Commission also notes that approval of a new gaming venue increases competition within the municipality which brings with it a small economic benefit.
44. While the impact on tourism is difficult to measure, the Commission acknowledges that Cowes is a popular tourist destination, and considers that the addition of gaming to the Continental Hotel will strengthen its entertainment offering and have a positive impact on tourism within Cowes.
45. On balance, the Commission considers that approval of this application will have a slightly positive economic impact on the municipality.



CONCLUSION

46. The no net detriment test in section 3.3.7(1)(c) of the Act 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.⁹
47. The Commission has considered the likely economic and social impacts of the proposal and concludes that approval of this application will have a slightly positive net social and economic impact on the municipality.
48. The Commission accepts that approval of this application will increase EGM accessibility in the municipality and the risk of an increase in problem gambling expenditure. However, this negative is outweighed by the positive social and economic benefits of this application.
49. Further, the Commission is satisfied as to the other matters in section 3.3.7(1), namely that the Applicant has the authority to make the application, and the Premises will be suitable for the operation of gaming machines.
50. The Commission is satisfied that it is appropriate to exercise its discretion and approve the application.

**The preceding [50] paragraphs are a true copy of the Reasons for Decision herein of –
Miss Gail Owen, Deputy Chairman
Ms Kate Hamond, Commissioner**

⁹ Romsey (2008) 19 VR 422, 435