



**DECISION AND REASONS FOR DECISION**

In the matter of an application under section 3.4.17(4) of the *Gambling Regulation Act 2003* by the Longbeach RSL Sub-Branch Inc for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises the Longbeach RSL, located at 4 Thames Promenade, Chelsea from 65 to 80 gaming machines.

**Commission**

Mr Ross Kennedy, Deputy Chairman

Ms Kate Hamond, Commissioner

**Appearances**

Ms Sarah Porritt of Counsel for the Applicant (instructed by Williams Winter Solicitors)

Mr Justin Ghattas as Counsel Assisting the Commission

**Date of Hearing**

18 December 2013

**Date of Decision**

7 January 2014

**Decision**

The Application be granted.

**Signed**

A handwritten signature in blue ink, appearing to read 'R Kennedy', with a long, sweeping tail.

**Mr Ross Kennedy**

Deputy Chairman



## REASONS FOR DECISION

### INTRODUCTION

1. This is an application by the Longbeach RSL Sub-Branch Inc (**the Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Longbeach RSL, located at 4 Thames Promenade, Chelsea (**the RSL**), from 65 to 80.
2. The relevant municipal authority is Kingston City Council (**the Council**). On 3 December 2013, the Council informed the Commission that it did not wish to make a submission in support of, or in opposition to, the application.
3. At the hearing of the application, the Commission was informed that the RSL had recently changed its trading name from the Edithvale-Chelsea RSL Inc. to the Longbeach RSL Inc. Accordingly, references to Edithvale-Chelsea RSL in the submitted materials are understood by the Commission to refer to the premises now known as the Longbeach RSL.

### THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. 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.<sup>1</sup> 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.<sup>2</sup>
5. 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.<sup>3</sup>

## THE CITY OF KINGSTON AND THE LONGBEACH RSL

6. The City of Kingston (**Kingston**) is a metropolitan Local Government Area located approximately 25 kilometres south-east of Melbourne and includes the major suburbs of Cheltenham, Moorabbin and Chelsea. Kingston occupies two Statistical Local Areas<sup>4</sup> (**SLAs**): Kingston – North and Kingston – South.
7. Kingston is subject to a municipal limit of 1135 EGMs<sup>5</sup>. Currently there are 17 gaming venues in the municipality operating a total of 880 EGMs. The RSL is one of six venues approved for gaming within the Kingston SLA. If this application is granted, the installation of an additional EGM at the Club will take the number of EGMs operating in Kingston up to 895.
8. If the Commission were to grant the Application, the number of EGMs operating in Kingston would not increase beyond that which were operating in Kingston prior to the amalgamation of the two RSLs in 2011.
9. Kingston has an average of 7.27 EGMs per 1,000 adults which is 31% more than the metropolitan average and 25% more than the State average. Expenditure on EGMs in Kingston for the 2011-12 financial year was \$78,986,274.55 which equates to an average expenditure per adult of \$653, which is 12% more than the metropolitan average and 19% more than the State average. However, gaming expenditure in Kingston has decreased by 20.24% in real terms over the last five years compared with a 16.34% decrease in metropolitan Melbourne over the same period.
10. The Kingston – South SLA is ranked 43<sup>rd</sup> out of the 79 metropolitan SLAs on the SEIFA scale for disadvantage,<sup>6</sup> indicating that the SLA in which the RSL is located exhibits few signs of

<sup>1</sup> See: s 1.1(2) of the Act.

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

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

<sup>4</sup> 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.

<sup>5</sup> Pursuant to section 3.4A.5(3)(b) of the Gambling Regulation Act 2003 the Victorian Commission for Gambling and Liquor Regulation determined, in accordance with the criteria specified in the Minister for Gaming's Order on 15 August 2012, the maximum permissible number of gaming machine entitlements under which gaming may be conducted in each region.

<sup>6</sup> Socio-Economic Indexes for Areas (SEIFA) is a product developed by the ABS to assist in the assessment of the welfare of Australian communities, providing a method of determining the level of social and economic well-being in each region.



disadvantage. When broken down into a Census Collection District level, 8% of collection districts within a 2.5km radius of the RSL are in the first quintile of disadvantage, indicating that there are limited pockets of relative disadvantage in the area surrounding the RSL. However, over 50% of the remaining population within a 2.5km radius of the RSL fall within the third, fourth and fifth quintiles, indicating that the majority of this area shows few signs of relative disadvantage.

## THE MATERIAL BEFORE THE COMMISSION

11. The Applicant provided the Commission with extensive material in support of its application, including:
  - a) Socio-Economic Impact Report, prepared by NBA Group, dated September 2013 (**the NBA Report**);
  - b) Gaming Expenditure Review prepared by Mr Michael Clyne, dated 5 September 2013 (**the Clyne Report**);
  - c) Witness Statement of Michael John Weissenfeld, dated 30 September 2013;
  - d) Witness Statement of Leigh Jeffrey Proud, dated 30 September 2013; and
  - e) Witness Statement of John Patrick Morris, dated 30 September 2013.
12. Additionally, the Commission considered an Economic and Social Impact Report dated December 2013 and an undated Pre-Hearing Inspection and Compliance Report, prepared by VCGLR staff.

### ***The Longbeach RSL***

13. The Commission was advised by witnesses from the RSL that the Edithvale-Chelsea RSL was established in 2011 as a result of an amalgamation between Chelsea RSL and Aspendale-Edithvale RSL, on the site of Chelsea RSL. The RSL consists of a 150 seat bistro, children's play room, sports bar, member's lounge, lounge areas joining various parts of the venue, outdoor terraces, and a gaming room with 65 EGMs. The RSL also has direct access to the Chelsea City Hall, which serves as a large function and event space for community use.





14. As at 30 September 2013, the RSL has 2265 members comprising 1095 Social Members, 493 Affiliate Members, 400 Service Members, and 277 Community Members.
15. The RSL allows community groups to use the RSL facilities free of charge. These facilities are used for activities such as community functions, sporting club meetings and community group AGMs.
16. The RSL provides members with discounted bistro meals and drinks, as well as access to the facilities of the RSL. Cash and in-kind contributions are also made to local community and sporting groups.
17. The RSL plans to use the revenue to be derived from the additional EGMs to continue to fulfil its charitable objectives, increase its financial contributions to the community and further develop and implement community focused initiatives and events. The additional revenue will also assist the RSL in future refurbishments and developments.

***Social and Economic Impact Statement – NBA Group***

18. The NBA Report concluded that Kingston experiences a low degree of social and economic disadvantage relative to other municipalities in Victoria. Further, the NBA report stated that the population of Kingston is characterised by a slightly higher than Victorian average household income, as well as an older age profile and gradual increase in the number of family households.
19. The NBA Report outlined the level of cash and in-kind community contributions made by the RSL. These contributions totalled \$297,586 in the last 12 months, with some significant contributions made to:
  - Subsidised food, drink and entertainment, totalling approximately \$154,000;
  - Provision of other member, advice and support services, totalling approximately \$60,000;
  - Welfare services, totalling approximately \$25,000; and
  - Educational sponsorship to local schools, totalling approximately \$3,600.



20. The NBA Report stated that the principal economic and social benefits of the application would be derived from the increase in revenue for the RSL, which will assist it to:
- continue and increase the level of support provided by the RSL to a wide variety of local community organisations;
  - support the RSL, which is an important community facility with limited scope to increase revenue, affecting its ability to support the wider community through a range of initiatives; and
  - further redevelop the RSL including the refurbishment of function areas.
21. The NBA Report considered that the risk of an increase in problem gambling in Kingston as a result of the approval of this application will be mitigated through the following factors:
- EGMs are already offered at the RSL and extensively throughout the municipality;
  - the RSL is a destination venue, removed from areas of higher activity;
  - the municipal limit that applies to Kingston will not be exceeded;
  - the RSL has strong Responsible Service of Gaming procedures in place and is committed to minimising harm experienced by patrons.

The NBA Report concluded that approval of the application would have a positive social and economic impact on the Kingston community within the municipality.

#### ***Gaming Expenditure Review – Mr Michael Clyne***

22. The Clyne Report estimated that the introduction of an additional 15 EGMs into the RSL will result in an increase of expenditure of approximately \$544,653 in the first twelve months of operation.
23. Mr Clyne estimated that approximately 79% of the additional expenditure would be transferred from other gaming venues within the municipality and therefore, should this application be approved, there would be an increase in EGM expenditure within the municipality of approximately \$112,000.





24. The Commission accepts Mr. Clyne's estimate of likely EGM expenditure to be not unreasonable in this instance and accepts that a high proportion of transferred expenditure is likely, due to the mature gaming market in Kingston.

#### **LIKELY ECONOMIC IMPACT OF APPROVAL**

25. There is often an overlap between economic and social impacts of applications to operate EGMs. Be that as it may, the Commission considers that it is useful for the purpose of the balancing exercise to identify and analyse economic and social impacts as separate categories to arrive at a net position for each before undertaking the final analysis.<sup>7</sup>
26. The Commission accepts that there is unlikely to be a significant increase in expenditure within Kingston as a result of approval of this application. Expenditure that is derived from people pursuing gaming as a recreational activity is legitimate consumption expenditure and has an economic stimulus. However, expenditure that is derived from problem gaming is an economic burden as it leads to social costs such as a loss in productivity and an increase in health and social service requirements.
27. The Commission considers there to be an economic and social benefit in strengthening the financial position of the RSL so that it may continue and increase its work in the community and continue to improve its facility. The on-going contributions that the RSL provides to community and sporting groups, as well as local schools, furthers economic stimulus within the municipality and should be seen as an ancillary benefit.
28. The Commission accepts that there is some potential for some overall economic downsides of the application through possible increased problem gambling expenditure. This potentiality is limited by the policies and processes that the RSL has in place to identify and assist problem gamblers, as well as the significant portion of transferred expenditure that will occur as a result of the proposed increase of EGMs. Accordingly, the Commission considers that there will be a neutral economic impact on the community if the application were to be approved.

#### **LIKELY SOCIAL IMPACT OF APPROVAL**

<sup>7</sup> *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275.



29. On the material presented to the Commission, it is clear that the RSL has ongoing commitments and goals in terms of increasing its activity and support in the community, as well as further developing the venue.
30. The significant community contributions that the RSL makes, both cash and in-kind, indicate to the Commission that the social benefit associated with a grant of this application will have widespread impact on the Kingston community. The Commission considers that the benefit expressed in the application, to likely impact the broader Kingston community, will not be isolated to solely to members of the RSL.
31. While the Commission cannot be certain of the exact benefits that the revenue from additional EGMs will bring, the Commission is satisfied that the increase in gaming revenue will be used for the betterment of RSL members and the Kingston community.
32. Accordingly, the Commission considers that there will be a positive social impact on the community if the application were to be approved.

## **CONCLUSION**

33. The Commission notes the level of gaming expenditure and EGM density within Kingston but is not satisfied that approval of this application will have any more than a nominal impact on those factors. The Commission considers the risk of an increase in problem gambling as a result of approval of this application to be relatively low.
34. The Commission has considered the likely social and economic impacts of the proposal and considered that those impacts are likely to be neutral.
35. On the material that has been put before it, the Commission is satisfied of the other matters in section 3.4.20(1). Accordingly, the Commission is satisfied that it should exercise its discretion to approve the application.

***The preceding paragraphs are a true copy of the Reasons for Decision of Mr Ross Kennedy, Deputy Chairman, and Ms Kate Hamond, Commissioner.***