



# 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 Lordhaven Pty Ltd, for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises, the Albion Hotel, 327 Lonsdale Street, Dandenong, Victoria, from twenty-four (24) to thirty (30) gaming machines.

**Commissioners:** Miss Gail Owen, Deputy Chairman  
Mr Des Powell, Commissioner

**Appearances:** Ms Louise Hicks as Counsel for the Applicant  
(instructed by Bazzani Scully Priddle Lawyers)

Mr Scott May as Counsel Assisting the Commission

**Date of Hearing:** 20 February 2014

**Date of Decision:** 28 March 2014

**Decision:** That the application be granted, subject to the conditions set out in paragraph 58.

**Signed:**

**Miss Gail Owen**  
Deputy Chairman

## REASONS FOR DECISION

### INTRODUCTION

1. This is an application by Lordhaven Pty Ltd (**the Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Albion Hotel (**the Hotel**) located at 329 Lonsdale Street, Dandenong, from 24 to 30 EGMs. The Applicant is a company within the Cook Beaumont and Partners Group (**the Group**).
2. The relevant municipal authority is the City of Greater Dandenong (**Council**). The Commission did not receive a submission from the Council.

### THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. Determination of this application is governed by section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* (**the Act**).
4. Section 3.4.20 of the Act sets out the matters to which the Commission must have regard in determining the application, 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
    - (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.
5. Section 3.4.20(1)(c) of the Act outlines the 'no net detriment test'. This test requires the Commission to weigh the likely positive economic and social impacts of an application against the likely negative economic and social

impacts. This test will be satisfied if, following the weighing of any likely impacts, the net economic and social impact of approval on the well-being of the relevant community will be either neutral or positive.<sup>1</sup>

6. The Act recognises that, notwithstanding individual rights of self-determination and gaming's recreational legitimacy, gaming on EGMs can cause harm to some communities and to some members of some communities.<sup>2</sup> 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.

## **THE CITY OF GREATER DANDENONG**

7. Based on the material before the Commission:

- the Hotel is located at 327 Lonsdale Street, Dandenong, within the metropolitan Local Government Area (**LGA**) of the City of Greater Dandenong;
- the City of Greater Dandenong is approximately 30 kilometres southwest of the Melbourne Central Business District and covers an area of approximately 130km<sup>2</sup>;
- the City of Greater Dandenong is subject to a regional cap of 989 EGMs;
- there are 15 venues with approval to operate up to 972 EGMs within the LGA, with 933 EGMs actually operating;<sup>3</sup>
- the City of Greater Dandenong has an EGM density of 8.42 per 1,000 adults (52% greater than the metropolitan average and 45% more than the state average) with expenditure in the 2012/13 financial year totalling \$109.3 million giving an average expenditure per adult of \$987, 70% more than the metropolitan average and 79% more than the state average;

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<sup>1</sup> *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, 435

<sup>2</sup> See Gambling Regulation Act 2003 (Vic), s 1.1.(2).

<sup>3</sup> Victorian Commission for Liquor and Gambling Regulation, Monthly EGM Statistics – City of Greater Dandenong (28 March 2014).

- trend analysis of gaming expenditure in the City of Greater Dandenong shows that gaming expenditure has decreased by 20.83% in real terms<sup>4</sup> over the past 5 years, a rate of decrease exceeding the metropolitan average (17.11%);
- the City of Greater Dandenong is one of the most socially and economic disadvantaged LGAs in Victoria, with above average unemployment levels and below average household income<sup>5</sup>; and
- the Hotel is situated within the Greater Dandenong (C) - Dandenong statistical local area<sup>6</sup> (SLA) which is ranked 76<sup>th</sup> out of 79 metropolitan SLAs for relative socio-economic disadvantage<sup>7</sup> (with 79 being the most disadvantaged).

## THE ALBION HOTEL

8. The Commission was advised that the Hotel was built in 1891 and is the longest standing hotel in Dandenong. It currently comprises a sports bar with TAB, pool table and juke box, bistro seating for 60 patrons (open seven days a week for breakfast, lunch and dinner), a gaming room with 24 EGMs and an indoor/outdoor beer garden with a retractable roof.
9. The Hotel also provides low cost accommodation, for mostly long term residents, on the upper level of the Hotel.
10. The Hotel currently provides both cash and in-kind contributions (being food and beverage vouchers) to the local community, examples of which include:
  - \$3,500 cash, and \$500 in kind, per annum to the Skye Football Club;

<sup>4</sup> i.e. adjusted to CPI

<sup>5</sup> Commission Report, p 6.

<sup>6</sup> The Statistical Local Area (SLA) is an Australian Standard Geographical Classification (ASGC) defined area. SLAs are Local Government Areas (LGAs) or part thereof. SLAs are also defined for unincorporated areas for which LGAs are not defined. They therefore cover the whole of Australia without gaps or overlays. See Australian Bureau of Statistics, Australian Census Dictionary – Glossary (2011) available at- <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2901.0Chapter23002011>

<sup>7</sup> Socio-economic disadvantage is calculated by reference to the Socio-Economic Indexes for Areas (SEIFA), developed by the Australian Bureau of Statistics in order to assess the welfare of Australian communities. Each geographic area in Australia is given a SEIFA score which measures how relatively 'advantaged' or 'disadvantaged' that area is compared with other areas in Australia. The ABS broadly defines relative socio-economic advantage and disadvantage in terms of people's access to material and social resources and their ability to participate in society.

- \$3,500 cash, and \$500 in kind, per annum to St Johns Old Collegians Football Club;
- \$250 cash, and \$500 in kind, per annum to Dandenong West Football Club;
- \$120 per annum, and \$530 in kind to the Willow Lodge Retirement Village Bowls Club; and
- \$1000 per annum in-kind to the Dandenong Bowls Club.

## THE MATERIAL BEFORE THE COMMISSION

11. The Applicant filed the following documents in support of its application:
  - Social and Economic Impact Statement prepared by Colleen Peterson, Director of Ratio Consultants Pty Ltd, dated November 2013;
  - Gaming Expenditure Estimate, Albion Hotel, prepared by Michael Clyne, dated 28 November 2013;
  - Witness Statement of Stephen John Beaumont, Director of the Applicant, dated November 2013;
  - Witness Statement of Richard Davis, Group Operations Manager for the Group, dated December 2013;
  - Witness Statement of Leigh James Barrett, Consultant dated 25 November 2013; and
  - Witness statement of Health Edward John Szyrko, Venue Manager dated 11 February 2014.
12. The Commission also had before it a statistical report titled Economic and Social Impact Report dated February 2014 (**the Commission Report**) and a Pre-hearing Inspection and Compliance Report, both of which were prepared by Commission officers.
13. On 24 February 2014, after the hearing, the Commission visited the Hotel.

### ***Social and Economic Impact Statement – Ratio Consultants Pty Ltd***

14. Ms Peterson gave evidence on behalf of the Applicant about the social and economic impact of the application on the City of Greater Dandenong.
15. Ms Peterson's report summarised the potential social and economic benefits of the application as:
  - redevelopment of the venue at an estimated cost of \$1.2m, including an expanded bistro (including a dedicated function space), a new kitchen and children's play area. This will enable a full entertainment offer to be made to the local community and will support the "Revitalising Central Dandenong" project;
  - additional community contributions in cash of \$10,000 per annum (for the life of the entitlements) towards local community and sporting groups within the City of Greater Dandenong;
  - creation of 8 equivalent full time positions (although she conceded at the hearing that not all positions would be filled from within the LGA); and
  - economic flow on effects through the creation of increased supply contacts in the local area to service the redeveloped hotel.
16. Ms Peterson noted that the principal economic and social detriment of this application is the potential for an increase in problem gambling in one of the most significantly disadvantaged communities in Victoria.
17. However, in Ms Peterson's opinion, that detriment will be mitigated by the sizeable redevelopment of the Hotel, the subsequent provision of a full range of non-gambling entertainment and recreational facilities, the modest gaming expenditure generated at the Hotel, and low utilization of machines (which is expected to continue), the small and intimate gaming room, restrained opening hours and the Hotel's commitment to responsible service of gaming (RSG).
18. The Commission questioned Ms Peterson about her view on the direct entry to the gaming area from Lonsdale Street. Ms Peterson stated that, while it

would be her preference to have this entry closed, no additional risk to problem gambling resulted from the easy accessibility to the gaming.

19. In concluding, Ms Peterson told the Commission that, in her view, the potential disadvantage was counterbalanced by the benefits associated with the application and, therefore, the introduction of an additional 6 EGMS into the Hotel would result in a slightly positive net social and economic impact on the local community.

#### ***Evidence of Likely Expenditure – Michael Clyne***

20. The Applicant engaged Mr Clyne to provide an estimate of the expenditure that would be generated by an additional 6 EGMs at the Hotel. Mr Clyne's report was based on the outputs of the Geotech Model.

21. Mr Clyne estimated that:

- an additional 6 EGMS at the Hotel would result in increased expenditure of approximately \$465,354;
- of this expenditure, approximately 93% would be transferred from other venues in the Hotel's trade area (most of which are within the LGA); and
- after taking into account expenditure transferred from other gaming venues, expenditure would rise by \$33,642 in the City of Greater Dandenong for the first 12 months of operation (an increase of about 0.03% of the total gaming expenditure within the LGA in 2012/2013).

#### ***Evidence of responsible gambling practices – Leigh Barrett***

22. Mr Barrett gave evidence about the responsible gambling practices at the Hotel and the potential impact the application may have on problem gambling.
23. Mr Barrett gave evidence that, in his view, problem gamblers are attracted to larger venues unlike the Hotel which will remain a small venue in terms of gaming. Additionally, the Hotel's gaming room has shorter operating hours than the remainder of the Hotel which Mr Barrett believes acts to mitigate against the potential attractiveness to problem gamblers.

24. Mr Barrett's considered there to be clear and frequent monitoring of the gaming room by staff but conceded that the proposed positioning of the machines could impact the view staff would have from the cashier's area. In his view this could be overcome by the installation of appropriately placed mirrors.
25. Mr Barrett gave evidence that, based on his observations at the Hotel, staff frequently circulate the gaming floor and regularly interact with customers including those who displayed problematic behaviours. Mr Barrett considered the Hotel's RSG Policy exceeded current regulatory requirements, as did the level of training provided to Hotel staff.
26. Mr Barrett was unable to comment on the percentage of patrons who entered the gaming room directly from Lonsdale Street, as opposed to entering the gaming area via other areas of the Hotel.

***Evidence from the Applicant – Stephen Beaumont***

27. Mr Beaumont gave evidence about the Group's activities, the Hotel's current facilities, the proposed renovations works and the current community contributions.
28. Mr Beaumont told the Commission that the Group operates 25 licensed premises in Victoria and Queensland, with 10 venues containing EGMs. The Group's focus is on smaller venues and EGMs are not a focus of the Group's operations; rather, the key focus of the Group is providing traditional hotels with a strong food focus.
29. Mr Beaumont told the Commission that the Hotel currently comprises a public bar with TAB facilities, a bistro seating around 60 patrons, a gaming lounge with 24 EGMs, a large, fully roofed, beer garden to the rear and accommodation rooms. In 2011, the Group acquired a leasehold interest in an adjoining retail space.
30. The Applicant intends to integrate the adjoining retail space into the Hotel in order to broaden and rejuvenate the facilities at the Hotel, including a significantly increased bistro (seating up to 250 patrons), installation of a children's playroom, creation of a new club lounge, a sports bar and



reconfiguration of the public bar entry to create a bistro entry with an accessibility ramp. The redevelopment will focus on the food and beverage offering and include a new menu and increased capacity for functions.

31. Mr Beaumont estimated the total cost of the works to be \$1.2 million and will create approximately eight (8) full time jobs. Mr Beaumont told the Commission that the Hotel currently contributes approximately \$7,000 in cash plus \$2,500 in-kind (vouchers and venue use) to local sporting groups. If this application were to be approved, the Applicant will increase these contributions by \$10,000 per annum indexed to CPI.
32. Mr Beaumont told the Commission that the Group purchased the hotel in 1989, being the first hotel that the Group operated. In his opinion, Dandenong has changed significantly, particularly since 2006/2007 through the State Government's 'Revitalising Dandenong' project, and that Dandenong is gentrifying.
33. Mr Beaumont also told the Commission that it is becoming increasingly difficult to raise and borrow money for hospitality premises, revenue from the additional EGMs is critical to funding the redevelopment and that development of the scale proposed could not occur without that revenue.

***Evidence from the Applicant – Richard Davis***

34. Mr Davis gave evidence concerning the importance of EGMs in the Group's overall operations and the Group's commitment to RSG practices. Mr Davis told the Commission that EGMs are a small but financially important part of the Group's operations. According to Mr Davis, the Group's venues tend to have lower per machine expenditure than other hotels and do not attract people who gamble large amounts of money.
35. Mr Davis told the Commission that, in his opinion, the Group's RSG policy exceeds minimum requirements, pointing to the requirement for staff to have a RSG qualification prior to commencing employment and the Hotel's regular consultation and staff training with Gambler's Help. Mr Davis told the Commission that the Hotel's RSG policy is reviewed quarterly by an external contractor and that Mr Davis visits the Hotel weekly and conducts a monthly audit.

36. Mr Davis told the Commission that new RSG initiatives have been put in place, including the establishment of a Responsible Gambling Coordinator role at the Hotel and that an RSG staff training module has been developed in partnership with an external contractor and Gambler's Help.

***Evidence from the Applicant – Heath Szyrko***

37. Mr Szyrko gave evidence concerning the day-to-day operation of the Hotel.
38. Mr Szyrko gave evidence that, during peak times, patrons may not have access to an EGM as they are fully utilised. Mr Szyrko stated that he has spoken to patrons who are watching and has been told they often leave for other venues close by as they are unable to play the machines they want.
39. Mr Szyrko gave evidence concerning his role at the Hotel which encompasses customer care and monitoring roles as well as ensuring that the correct signage and self-exclusion materials are available. Mr Szyrko told the Commission that the Hotel operates under the Australia Hotels Association self-exclusion program and staff are provided with training about this program. Additionally, the Hotel has, in Mr Szyrko's view, a "great relationship" with Gambler's Help and Mr Szyrko is in regular contact with the local Gambler's Help officer.
40. Mr Szyrko told the Commission that the Hotel had fourteen breaches involving self-excluded patrons in the gaming room. In all instances, self-excluded people were identified quickly (within minutes). Mr Szyrko also gave evidence of three instances in the past year where patrons have displayed signs of problem gambling and how he handled each situation.
41. Mr Szyrko told the Commission that there was a lapse in the RSG policy in late 2012 where his own RSG certificate had lapsed. This was due to a data entry error, and when this was discovered, was immediately rectified and procedures have since been put in place to prevent a reoccurrence.
42. Mr Szyrko told the Commission that staff can see the majority of EGMs from the cashier/bar area (with approximately four machines restricted from view) and staff have a clear view of the entrance. Mr Szyrko's stated that a CCTV

monitor behind the bar enabled staff to view those areas of the gaming room not in direct view.

43. The Commission questioned Mr Szyrko on the proposed layout and positioning of EGMs should the application be approved, and whether they may obstruct the view of staff monitoring the gaming room. Mr Szyrko conceded that the intended positioning may partially obstruct the view that staff would have of the gaming room.

## **FINDINGS BY THE COMMISSION**

### ***Social impact of approval***

44. The Commission is concerned about the significant level of social and economic disadvantage present in the LGA and the reality that increased access, regardless of the number, is likely to increase the risk of problem gambling. However, the Commission considers these risks are somewhat mitigated by the Applicant's RSG practices, the demonstrated commitment to staff training and the proper management of problem gambling. Additionally, the Commission accepts the venue is of a size which, to some extent, limits the risk of problem gambling and the proposed redevelopment will broaden the offering, lessening the emphasis on gaming.
45. The Commission considers the location of the Hotel in a strip shopping area is also a concern. The Commission's observations at the site indicate that the majority of patrons utilised the entry with direct access to the gaming room rather than the "main" hall entry. The Commission considers that the negative social impacts of the application would be mitigated if this entrance were closed. This would result in entry from the other access areas which promote the broader offering. This may reduce the level of attractiveness of the venue to problem gamblers, reduce the focus and emphasis of the Hotel from gambling and prevent access from minors directly into the gaming room.
46. Additionally, the Commission considers the new machines must be positioned to ensure that staff can properly observe the gaming room and exercise proper management over any identified problem gambling. Accordingly, the

additional EGMs must be positioned in a manner that does not obstruct (partially or otherwise) the view staff have from the bar/cashier area.

47. The Commission notes that the redevelopment of the Hotel will be completed prior to the installation of EGMs. The Commission considers that the upgraded facilities do represent a social benefit to members of the community who utilise those facilities.
48. The Commission accepts the Applicant's commitment to increase its community contributions to \$10,000 per annum (adjusted annually by reference to CPI) as a social benefit.
49. In balancing the social detriments of the proposal against the social benefits of the proposal, the Commission is satisfied that the net social impact on the City of Greater Dandenong would be neutral.

### ***Economic impact***

50. The Commission accepts that this proposal will result in an increase of new gaming expenditure in the City of Greater Dandenong. The Commission notes that the estimated new gaming expenditure is minimal and will have a minor economic impact on the municipality.
51. The Commission considers that redevelopment of the Hotel will involve a significant level of investment. Additionally, the Commission accepts that there will be complementary expenditures and supply contracts in conjunction with the redevelopment. The Commission notes that eight full-time jobs are expected to be created as a result of the redevelopment (albeit that it is likely the benefit will be offset by the expected loss of jobs in other venues due to the transfer effect), with at least one in the gaming area of the Hotel and at least some of the employment created will be sourced from the local area. The Commission is comforted that these benefits will accrue as the proposed works are to be completed prior to the installation of additional EGMs.
52. Accordingly, the Commission considers there will be a neutral net economic impact on the relevant community.

## **Conclusion**

53. 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 Dandenong.
54. 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.
55. The Commission is satisfied that, on the material put before it, the Applicant understands and will abide by its obligations to take reasonable measures to prevent problem gambling.
56. However, the Commission recognises it has a duty to ensure that the Hotel redevelopment works and proposed community contributions, both major factors in the Commission's decision, proceed.<sup>8</sup> At the hearing, the Applicant presented two proposed conditions (Conditions 1 and 2), which the Commission has accepted.
57. Further, the Commission wishes to ensure that the factors leading to its consideration of the social impacts in this application (such as closure of the gaming entrance) are similarly implemented. As such, the Commission has imposed a condition (Condition 3) which is designed to give effect to the Commission's considerations.
58. Pursuant to section 3.4.20(2) of the Act, it is a condition of this approval that the Licensee complies with the following conditions:

### **Condition 1 - Community Contributions**

1.1 The Licensee will:

- (a) establish the Albion Hotel Community Fund (**the fund**):

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<sup>8</sup> 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.

- (b) make the cash contribution referred to in clause 1.1(c) from the commencement of the operation of the 6 additional EGMs at the Hotel until 15 August 2022;
  - (c) the annual cash contribution will be the sum of \$10,000 (indexed each year, commencing in 2015, by CPI all groups Melbourne) (**the Contribution**); and
  - (d) the Contribution will be allocated/applied each year to not-for-profit community and sporting organisations providing services and facilities to residents in the City of Greater Dandenong.
- 1.2 The distribution of the Contribution in accordance with clause 1.1 will be determined by a committee (**the Committee**) comprising:
- (a) two representatives nominated by the Licensee; and
  - (b) one representative of Council, or, if Council is unwilling to provide a representative, a community representative nominated by the Licensee.
- 1.3 The Committee will advertise annually in a newspaper circulating in the City of Greater Dandenong for submission from not-for-profit community and sporting organisations, providing services and facilities to residents within the City of Greater Dandenong, regarding the distribution of the Contribution to be made by the licensee each year. The Committee will assess requests for cash contributions in accordance with guidelines to be established by the Committee.
- 1.4 In addition to the payment of the Contributions referred to in clause 1.1(c), the Licensee must continue to pay cash contributions to sporting organisations operating within the City of Greater Dandenong of not less than \$7,000 (**Existing Contributions**) until 15 August 2022. The Existing Contributions will be increased each year, commencing in 2015, by reference to increases in the CPI all groups Melbourne for the preceding year.

## Condition 2 – Works

- 2.1 The use of the 6 additional EGMs (over and above the 24 gaming machines currently operating at the Licensed Premises) must not commence until the Works have been substantially completed to the satisfaction of the Commission and Condition 3 has been satisfied.
- 2.2 If the Works are not substantially completed by **31 December 2015**, or such later date as agreed to in writing by the Commission, this approval will lapse.
- 2.3 For the purpose of these conditions, the **Works** comprise:
- (a) extension of the Hotel into the adjacent shop to create an expanded bistro;
  - (b) relocation of the public bar and TAB;
  - (c) creation of a club lounge;
  - (d) reconfiguration of the existing public bar entry to create a bistro entry with an accessibility ramp;
  - (e) relocation of the liquor servery;
  - (f) expansion of the kitchen;
  - (g) creation of a new children's playroom;
  - (h) installation of additional male, female and disabled toilets; and
  - (i) construction of a new storeroom,
- as per the indicative plans prepared by Hay Partners Architects Pty Ltd dated 14 February 2014.
- 2.4 The Commission may, upon the request of the owner or operator of the Licensed Premises, agree to extend the time for substantial completion of the Works. Any request for an extension of time must

include an explanation as to why the Works have not been substantially completed by 31 December 2015.

**Condition 3 – Closure of gaming room entrance**

- 3.1 The Applicant must close and must not permit patron entry to the gaming room directly from Lonsdale Street (currently being the entrance marked as “Gaming Entry” on the proposed ground floor plan dated 14 November 2013, prepared by Hay Partners Architects Pty Ltd).

**The preceding 58 paragraphs is a true copy of the Reasons for Decision of Miss Gail Owen (Deputy Chairman) and Des Powell (Commissioner)**