



# 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 McKinnon Hotels Pty Ltd for amendment of its venue operator's licence to vary the number of gaming machines at the approved venue, the McKinnon Hotel, 251 McKinnon Road, McKinnon, from nineteen (19) to forty-five (45) gaming machines.

**Commission:**

Miss Gail Owen, Deputy Chairman  
Mr Des Powell, Commissioner

**Appearances:**

Mr Nick Tweedie as Counsel for the Applicant

Mr Mark Saunders on behalf of the City of Glen Eira

Mr Bronte Campbell as Counsel assisting the Commission

**Date of Hearing:**

14 March 2013

**Date of Decision:**

29 April 2013

**Decision:**

That the application be granted subject to the conditions set out in paragraph 58 of these Reasons for Decision.

**Signed:**

**Gail Owen**

Deputy Chairman



## REASONS FOR DECISION

### INTRODUCTION

1. This is an application by McKinnon Hotels Pty Ltd (the **Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the McKinnon Hotel, 251 McKinnon Road, McKinnon (the **Hotel**), from 19 to 45 EGMs.
2. The relevant municipal authority is the City of Glen Eira (the **Council**). The Council opposed the application and was represented by Mr Mark Saunders, Manager Public Health & Community Development, at the hearing of the application.

### THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (the **Act**). The Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and some members of some communities.<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>
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.<sup>3</sup>
5. Section 3.4.19 of the Act allows the Council to make a submission addressing the economic and social impact of the proposal on the well-being of the community and taking into account the impact of the proposal on surrounding municipal districts. The Commission is bound to

<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").



take this submission into consideration when applying the no net detriment test. This recognises the special role of local government in representing the people of a community.<sup>4</sup>

## THE CITY OF GLEN EIRA AND THE MCKINNON HOTEL

6. The City of Glen Eira (**Glen Eira**) is a Metropolitan Local Government Area located approximately 15 kilometres south-east of Melbourne and includes the major suburbs of Caulfield, Bentleigh and Elsternwick. Glen Eira has two statistical local areas<sup>5</sup> (**SLAs**), Glen Eira – Caulfield and Glen Eira – South. The Hotel is located in the Glen Eira – South SLA in the suburb of McKinnon.
7. Glen Eira is subject to a municipal limit of 1,061 EGMs<sup>6</sup>. Currently, there are 12 gaming venues within the municipality operating a total of 731 EGMs representing an overall density of 6.58 EGMs per 1,000 adults. This represents an EGM density 18% greater than the metropolitan average and 14% greater than the State average. Should this application be approved, the density of EGMs within Glen Eira will rise to 6.82.
8. Glen Eira – South SLA has considerably less EGMs (289) compared with Glen Eira – Caulfield SLA (442). The Hotel is currently one of five gaming venues within Glen Eira – South SLA and has the least number of EGMs of the gaming venues in the municipality.
9. In terms of gaming expenditure, Glen Eira has an average expenditure per adult of \$669, which is 5% more than the metropolitan average and 11% more than the State average. The Commission notes that gaming expenditure within Glen Eira has decreased by 21% in real terms (indexed to CPI) over the past 5 years. This represents a significant decline when compared to the overall metropolitan expenditure, which has decreased by 17.2% in real terms over the past 5 years.
10. The Glen Eira – South SLA is ranked 23<sup>rd</sup> out of the 79 metropolitan SLAs on the SEIFA Index for Disadvantage<sup>7</sup>, which suggests that there is a relatively low level of disadvantage within the SLA when compared with the other metropolitan municipalities in Victoria. When broken down

<sup>4</sup> *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [247] - [249].

<sup>5</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>6</sup> 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.



into a Census Collection District (CCD) level, only 1% of CCDs within a 2.5km radius of the Hotel exhibit signs of significant disadvantage. The Commission accepts that, on a SEIFA basis, the area surrounding the Hotel presents as relatively affluent.

## THE MATERIAL BEFORE THE COMMISSION

11. The Applicant provided the Commission with extensive material to establish the economic and social benefits that approval of the application would bring to the municipality. That material is summarised below.

### *Social and Economic Impact*

12. The Applicant engaged Mr Rhys Quick, a director of Urbis Pty Ltd, to prepare a social and economic impact statement to accompany the application (the **Urbis Report**). Mr Quick was unable to attend the hearing and, in lieu of Mr Quick, the Applicant called Ms Laura Thomas, an associate director of Urbis Pty Ltd, to speak to the Urbis Report.
13. Ms Thomas advised the Commission that she is a town planner by profession and is experienced in preparing and reviewing social and economic impact assessment reports for gaming applications. Ms Thomas told the Commission that while she had not been involved in the preparation of the Urbis Report, she was responsible for the preparation of another report with respect to the Hotel's application for planning approval. As such, Ms Thomas is familiar with the Hotel, the City of Glen Eira and the proposal submitted by the Applicant. The Commission accepts that Ms Thomas is a suitable person to comment on the Urbis Report and the social and economic impact of this application generally.
14. Ms Thomas told the Commission that Glen Eira presents as a municipality with very low levels of socio-economic disadvantage and is ranked in the tenth decile in terms of relative disadvantage. Ms Thomas also advised that the Glen Eira – South SLA is in the ninth decile of relative socio-economic disadvantage. Ms Thomas told the Commission the statistical profile of the municipality suggests that residents of Glen Eira are better placed to absorb the impacts of problem gambling compared with a municipality which exhibits greater signs of disadvantage.
15. Ms Thomas gave evidence that the Hotel is dated and demonstrates a lack of significant investment over a long period of time. Ms Thomas told the Commission that, should this



application be successful, the Applicant proposes to undertake a complete redevelopment of the venue estimated at \$3.5 million. Ms Thomas provided the Commission with a number of plans detailing the proposed redevelopment which include:

- a complete refurbishment of the Hotel's décor and external façade;
- re-working of the layout of the ground floor including relocation of the bistro away from the gaming room;
- the addition of al fresco dining facilities in the form of a beer garden and outdoor decking;
- transformation of the first floor into dedicated function facilities and office space; and
- demolition of the drive-through bottle shop.

16. Ms Thomas told the Commission that the additional EGMs would be located in the existing gaming room which is large enough to accommodate them.
17. Ms Thomas advised the Commission that the Hotel currently contributes (in the order of) \$13,000 per annum to sporting groups in Glen Eira and makes an estimated \$10,000 of in-kind contributions to local community groups each year. Ms Thomas told the Commission that, if this application were successful, the Hotel proposes to increase its cash contributions to community and sporting groups to \$40,000 per annum and in-kind contributions to \$20,000 per annum.
18. Furthermore, Ms Thomas stated that the proposed usage and renovations of the premises would generate new employment opportunities. Ms Thomas estimated that 12.5 full time positions would be created to service the redeveloped venue and noted that there would be jobs created during the construction phase.
19. Ms Thomas told the Commission that the Hotel has adopted the Australian Hotels Association Code of Conduct and has regular contact with Gamblers' Help Southern in the form of monthly emails and visits by the venue support officer once every six weeks.
20. Ms Thomas considered the risk of an increase in problem gambling due to the additional EGMs to be installed at the Hotel to be minimal as the Hotel is an existing gaming venue and Glen Eira has an established and competitive gaming market. Ms Thomas told the Commission that the relatively low level of new gaming expenditure that would be brought to the municipality (a 1% increase over the municipality's current expenditure) suggested that the



risk of a significant increase in problem gambling expenditure is limited.

21. Ms Thomas noted that Glen Eira is located in the southern metro region which the Productivity Commission has referred to as having "...a high expenditure band and a moderate risk of problem gamblers". However, Ms Thomas emphasised that expenditure figures for the southern metro region may have been skewed by the fact that it includes Frankston, Mornington Peninsula, Greater Dandenong and Kingston, all of which have a higher expenditure per adult than Glen Eira. Ms Thomas concluded that Glen Eira, on its own, is unlikely to be the cause of the Productivity Commission's moderate risk rating.
22. Ms Thomas disputed a number of conclusions made in the Council's submission to the Commission. Ms Thomas disagreed with the characterisation of the Hotel as 'highly accessible'. Ms Thomas asserted that the venue is more akin to a destination rather than a convenience venue. Ms Thomas noted that whilst the venue is located in a commercial precinct, the precinct is not particularly focused on retail and does not feature the types of businesses which attract considerable pedestrian traffic.
23. Ms Thomas also took issue with the Council's conclusion that the location of the Hotel near a kindergarten and children's health centre increases the risk of an increase in problem gambling. According to Ms Thomas, there is no conclusive research to suggest a link between problem gambling and physical proximity to such facilities. Ms Thomas also queried the reliance on the Productivity Commission's estimate that up to 41 per cent of EGM expenditure comes from problem gamblers as that figure takes into account all manner and variety of gaming venues and was not appropriate to attribute to one venue or municipality.
24. Ms Thomas agreed with the conclusion reached in the Urbis Report that approval of this application will not be detrimental to the well-being of the community of Glen Eira. Ms Thomas was questioned by the Commission as to whether her conclusion regarding detriment would change if a lesser transfer rate was applied (so that additional expenditure to the municipality increased). Ms Thomas told the Commission that she was of the view that due to the strength of Glen Eira's socioeconomic profile, there would need to be a significant increase in additional expenditure for her to change her conclusion.

***Mr Terence John Williams***

25. Mr Williams is a director and the company secretary of the Applicant and gave evidence at the hearing of the Application. Mr Williams is an experienced hotelier and is the current owner of the Grand Terminus Hotel in Bairnsdale, a gaming venue with 24 EGMs. Until February 2013,



Mr Williams was also the owner and operator of the Parkview Hotel, a gaming venue with 30 EGMs.

26. Mr Williams purchased the Hotel in June 2008 from a family who had owned and operated the Hotel for 40 years. Mr Williams gave evidence that the Hotel currently consists of a Sports Bar with TAB facilities, 120 seat bistro, function room, drive through bottle shop, first floor accommodation and offices, and a gaming room with 19 EGMs. Mr Williams told the Commission that the first floor accommodation was not used by members of the public but was used on the odd occasion by staff members.
27. Mr Williams told the Commission that the Hotel is dated and in need of major redevelopment. Additionally, Mr Williams holds serious concerns over the current layout of the Hotel and standard of the gaming room. Mr Williams told the Commission that patrons from a neighbouring aged care home have difficulty using the Hotel's stairs. Mr Williams also told the Commission that the bistro is not sufficiently segregated from the gaming room and children who may be in the bistro with their families have full view of the gaming room. Mr Williams said the proposed redevelopment will relocate the gaming room away from the bistro and include partitions obstructing the view into the gaming room. The redevelopment will also include the provision of ramp access as an alternative to the stairs.
28. The Commission raised a concern that cashiers (and staff) may not have a clear view of the entrances to the gaming room and that this problem may be exacerbated by the length of the EGM 'bank', inhibiting staff trying to monitor the entrances and EGM use. Mr Williams agreed with the Commission's concerns and told the Commission that the gaming room would be staffed by two employees at all times to ensure that gaming patrons were adequately supervised. Additionally, the gaming room is monitored through CCTV cameras placed throughout the gaming room.
29. Mr Williams did not believe that the Hotel currently has an issue with problem gambling and has full confidence in the Hotel's responsible service of gambling policies. Mr Williams gave evidence that the Hotel adopts the Australian Hotels Association Code of Conduct and maintains a detailed register which includes observations of gaming patrons and any issues that may arise as well as any self-exclusion breaches. Mr Williams told the Commission that the Hotel has a good working relationship with Gamblers' Help Southern which assists with staff training and has regular contact with the Hotel's general manager.



30. Mr Williams believes that the Hotel is a family hotel and acts as a meeting place for the population of McKinnon. Mr Williams gave evidence that the Hotel currently provides free use of its function facilities to local community groups and will continue to do so in the future.

***Evidence of likely EGM expenditure***

31. The Applicant provided the Commission with an expenditure estimate prepared by Mr Michael Clyne for PVS Australia Ltd (**PVS**). Mr Clyne is an independent gaming expenditure expert and was engaged by PVS Australia 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 been presented as evidence and accepted by the Commission, with some qualifications, on numerous occasions. The Commission accepts that Mr Clyne is qualified to give an expert opinion on matters of gaming expenditure.
32. Mr Clyne told the Commission that the Geotech Model predicted the annual expenditure on the 26 additional EGMs to be installed at the Hotel to be approximately \$2,105,581, of which 90.5% would be transferred from other venues. Mr Clyne told the Commission that due to the Hotel's close proximity to a number of neighbouring municipalities, a significant portion of the transferred expenditure would come from gaming venues outside Glen Eira. Mr Clyne told the Commission that the Geotech Model predicted that expenditure within the municipality will rise by \$531,171 in the first 12 months of trading should this application be approved.
33. The Commission questioned Mr Clyne on the factors that led to the Geotech Model's high transferred expenditure prediction. Mr Clyne told the Commission that Glen Eira is a relatively settled municipality in terms of gaming with little EGM movement and a decreasing trend in gaming expenditure. In his view this indicated that, at a municipal level, there was little demand for an increase in EGM numbers or accessibility. At a venue level, Mr Clyne noted that additional EGMs at the Hotel would significantly increase the venue's attractiveness and competitiveness in the market through improved choice, and accessibility to, gaming machines in the Hotel. As such, Mr Clyne said that the Hotel could be expected to draw more expenditure from other gaming venues as its competitiveness and EGM offering improved within the market.
34. The Commission drew Mr Clyne's attention to a statement in his report which noted that, should this application be approved, the daily expenditure per EGM following the increase in EGMs would be \$128. In response to questioning by Counsel Assisting the Commission, Mr Clyne conceded that this calculation is incorrect and should be \$214. Mr Clyne also agreed that, when compared with the current daily expenditure per EGM of \$204, the increase in





machines would strengthen the gaming performance of the venue. Mr Clyne noted that this was not unusual considering the limited gaming offering the Hotel currently provides and the significant improvement in competitiveness that could be expected by an increase in EGMs..

### ***Feasibility Report***

35. The Applicant engaged William Buck (Vic) Pty Ltd (**William Buck**) to provide a feasibility report as to whether the Applicant could complete the proposed redevelopment without the additional revenue derived by an increase in EGMs. Mr Antony St. John Hood is a director of William Buck and gave evidence at the hearing of the application.
36. Mr Hood told the Commission that, in his opinion, the \$3.5 million development would be not be viable without an expansion in the revenue base generated by the increase in gaming expenditure and food and beverage revenue at the redeveloped venue.
37. Mr Hood noted that the proposed redevelopment was expected to create 12.5 full time equivalent employment positions with an annual increase in wages of approximately \$500,000. Additionally, Mr Hood noted that the Applicant would increase its community contributions to local clubs and groups to \$60,000 per annum.
38. In Mr Hood's opinion, the proposed redevelopment of the venue, together with an increase in gaming revenue, will strengthen and reposition the Hotel in the market.

### **THE COUNCIL'S SUBMISSIONS**

39. In opposition to the application, the Council filed a Social Impact Assessment Report prepared by Symplan. Ms Bonnie Rosen is the author of that report and the principal director of Symplan and gave evidence at the hearing of the application.
40. Ms Rosen is a Fellow of the Planning Institute of Australia and a Certified Practicing Planner with over 25 years experience in urban and social planning. Ms Rosen advised the Commission that, while she is not qualified to comment on economic matters, she is able to comment on some aspects of economic issues insofar as they relate to social impacts.
41. Ms Rosen told the Commission that approval of this application will result in an increase in the risk of problem gambling in Glen Eira and the surrounding municipalities. In Ms Rosen's view, this potential increase in problem gambling outweighed the benefits of the application. Ms Rosen considered that:
  - the redevelopment of the Hotel merely improves a facility that already exists in the



community and therefore will have little positive impact on the community;

- the proximity of community facilities, such as a kindergarten, maternal child health centre and school, further increases the risk of problem gambling; and
- the proposed community contributions are relatively small when compared to the social and economic costs associated with problem gambling.

42. Ms Rosen was cross-examined at length by Counsel for the Applicant on a number of the conclusions in the Social Impact Assessment Report regarding the anticipated economic impacts of this application should it be approved. After considerable discussion, Ms Rosen conceded that she was not qualified to make conclusions and the economic findings in her report should be discounted. Additionally, Ms Rosen conceded that she had inadvertently omitted the social benefits that arise from gaming from her assessment. Ms Rosen acknowledged that the failure to consider these benefits was a deficiency in her social impact assessment.
43. Ms Rosen went on to acknowledge that her conclusion that expenditure was increasing in Glen Eira was incorrect and that, in fact, there is a significant downward trend in gaming expenditure in Glen Eira. Additionally, Ms Rosen retracted her conclusion that as gaming expenditure was increasing in Glen Eira and the application would further increase expenditure in the municipality, an increase in problem gambling was likely to result.
44. In her statistical assessment, Ms Rosen chose to compare Glen Eira with all local governments in Victoria rather than confine her assessment to metropolitan municipalities or a subset of municipalities with similar characteristics to Glen Eira. In terms of statistical analysis, there are often stark differences between regional and metropolitan municipalities. It is for this reason that the different types of municipality are split into their respective groups. In effect, Ms Rosen's analysis does not compare "apples with apples". The Commission is not assisted by such an analysis as it does not provide a reliable assessment of the municipality relative to other similar municipalities.
45. Similarly, the Commission notes that Ms Rosen failed to consider a number of social and economic benefits that would arise if this application were approved. Even if the Commission confines Ms Rosen's assessment to findings on social impacts, the Commission cannot be satisfied that Ms Rosen has identified, and placed appropriate weight on, the benefits of the application. Accordingly, the Commission can place little weight on Ms Rosen's finding that the risk of an increase in problem gambling outweighs the benefits of the application.



## LIKELY ECONOMIC IMPACT OF APPROVAL

46. While there is frequently a large degree of overlap between economic and social impacts of applications to operate EGMs, the Commission considers it useful to identify and analyse economic and social impacts separately to arrive at a net position for each aspect before undertaking the final analysis.<sup>8</sup>
47. The Commission accepts that approval of this application will result in an increase in gaming expenditure at the Hotel of approximately \$2,105,581. Having regard to the settled gaming market in Glen Eira and the number of competing venues in close proximity to the Hotel, the Commission considers it likely that a substantial portion of this expenditure will be transferred from other venues. While the Commission hesitates to accept a transfer rate of 90%, in this case, the Commission considers Mr Clyne's evidence that the municipality would see a modest increase in expenditure in the first twelve months of trade if this application were approved is not unreasonable.
48. The Commission accepts that gaming expenditure, not associated with problem gambling, is legitimate consumption expenditure generated by and large by people enjoying a recreational activity. However, revenue derived from problem gamblers is a disbenefit as it leads to economic costs such as lost productivity, increased health and social service requirements and other social costs. The Commission considers there to be a marginal economic benefit associated with this application through an increase in gaming expenditure within the municipality.
49. The Commission considers the key benefit of the application will be the redevelopment of the Hotel which will provide an economic stimulus and create employment both throughout the construction phase and after the redevelopment is completed.
50. The Commission considers that increasing the number of EGMs at the venue will significantly strengthen the gaming offering at the Hotel and increase its competitiveness in the market. The Commission sees this as a slight economic benefit.
51. The Commission is also of the view that any increase in problem gambling as a result of this application will be offset by the economic stimulus an increase in gaming revenue will bring to

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



the municipality. On balance, the Commission considers that there will be a positive economic impact on the community if the application were to be approved.

## LIKELY SOCIAL IMPACT OF APPROVAL

52. The risk of an increase in problem gambling is also a social disbenefit. In this case, the Commission is satisfied that the Applicant has a good attitude towards responsible service of gambling and the redeveloped venue will assist the Applicant in ensuring that incidents of problem gambling in the Hotel are minimised.
53. The Commission is satisfied that the potential for an increase in problem gambling is further mitigated by the high level of accessibility to EGMs that residents of Glen Eira already have. The Commission considers that it is unlikely that an additional 26 EGMs at this venue will materially increase the prevalence of problem gambling. Further, the Commission is satisfied that Glen Eira (as a relatively affluent and advantaged municipality) is well placed to absorb the impacts of problem gambling, should they arise.
54. The Commission considers the increasing of cash community contributions to \$40,000, and in-kind contributions to \$20,000, annually will have a positive social impact on the municipality. The Commission also considers a redeveloped venue with the inclusion of conference and function facilities to be a social benefit to the community.
55. The Commission is of the view that the likely social impact of the proposal will be positive.

## CONCLUSION

56. The no net detriment test in section 3.4.20(1)(c) of the Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.<sup>9</sup>
57. After consideration of the material put before it, the Commission is satisfied that the approval of this application will not result in a net economic and social detriment to the community of Glen Eira.

<sup>9</sup> *Romsey* (2008) 19 VR 422, 435.



58. The Commission notes that a number of significant benefits of this application arise out of the redevelopment of the Hotel. Without those benefits, the Commission would not have been satisfied that approval of this application would not result in a net social and economic detriment to the community of Glen Eira. It is for this reason that the Commission considers it appropriate to impose the following condition on the approval of this application:
- If the redevelopment of the venue (as set out in paragraph 15 of these reasons) is not substantially completed in accordance with the plans submitted with this application by 1 May 2017 (or such later date stipulated in writing by the Commission), this approval will lapse and the number of EGMs that may be operated at the Hotel will revert to 19.
59. On the material that has been put before it, the Commission is satisfied of the other matters in section 3.4.20(1). The Commission is also satisfied that the Applicant understands and will continue to act on its obligations to take measures to prevent problem gambling. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the application subject to the condition set out in paragraph 58..

**The preceding [59] paragraphs are a true copy of the Reasons for Decision herein of –**

**Miss Gail Owen, Deputy Chairman**

**Mr Des Powell, Commissioner**