



# 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 Noble Park RSL Sub-branch Inc for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises, the Noble Park RSL, 1128 Heatherton Road, Noble Park from 30 to 35 gaming machines.

**Commission**

Mr Bruce Thompson, Chairman

Mr Ross Kennedy, Deputy Chairman

**Appearances**

Ms Jennifer Trewhella of Counsel for the Applicant  
(instructed by Williams Winter Solicitors)

Mr Bronte Campbell as Counsel Assisting the  
Commission

**Date of Hearing**

9 January 2014

**Date of Decision**

21 January 2014

**Decision**

That the application be granted.

**Signed**

**Mr Bruce Thompson**

Chairman



## REASONS FOR DECISION

### INTRODUCTION

1. This is an application by Noble Park RSL Sub Branch Incorporated (**the Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Noble Park RSL, 1128 Heatherton Road, Noble Park (**the RSL**) from 30 to 35 EGMs.
2. The relevant municipal authority is the City of Greater Dandenong Council (**the Council**). On 26 November 2014, the Council informed the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) that it did not wish to make a submission in respect of the application.

### THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (**the Act**). The Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and some members of some communities.<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>

<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**).



5. Further, 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 wellbeing of the community and taking into account the impact of the proposal on surrounding municipal districts. The Commission is bound to 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 GREATER DANDENONG AND THE NOBLE PARK RSL

6. The City of Greater Dandenong (**Greater Dandenong**) is a metropolitan Local Government Area (**LGA**) located approximately 30 kilometres south-east of Melbourne and includes the major suburbs of Dandenong, Noble Park and Springvale.
7. Greater Dandenong is comprised of two Statistical Local Areas<sup>5</sup> (**SLA**), Greater Dandenong – Dandenong and Greater Dandenong – Balance. The RSL is located within the Greater Dandenong – Balance SLA, in the heart of Noble Park. In terms of social and economic disadvantage, Greater Dandenong is characterised by high levels of disadvantage, above average unemployment and below average household income.
8. The Greater Dandenong – Balance SLA is ranked 78th of the 79 metropolitan SLAs on the SEIFA scale of disadvantage<sup>6</sup>, indicating a very high level of disadvantage in the area in which the RSL is located. It is generally accepted that a majority of a venue's gaming patrons will be drawn from residences within a 2.5km radius of the venue. Notably, 89% of Collection Districts within a 2.5km radius of the RSL are in the first quintile of disadvantage (relative to all Victorian Collection Districts), which suggests that a large portion of the RSL's patrons are likely to be significantly disadvantaged.
9. Greater Dandenong is subject to a regional cap of 989 EGMs.<sup>7</sup> Currently there are fifteen gaming venues in Greater Dandenong with approvals to operate a total of 967 EGMs. Greater Dandenong is characterised by above average gaming statistics, with:
  - 9.1. a density of 8.42 EGMs per 1,000 adults (52% greater than the metropolitan average and 45% greater than the State average);

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

<sup>7</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.



- 9.2. expenditure for the 2012-13 financial year of \$109.3 million; and
  - 9.3. annual expenditure per adult of \$987 (70% greater than the metropolitan average and 79% greater than the State average).
10. Despite Greater Dandenong's above average gaming statistics, expenditure in the municipality is declining and has decreased by 18.94% in real terms<sup>8</sup> over the last five years. While declining expenditure is common in metropolitan municipalities, it is noted that expenditure is declining at a greater rate than the metropolitan average across Victoria (16.85%).
  11. At the hearing of the application, the Applicant did not dispute the concerning level of disadvantage within the municipality and areas surrounding the RSL. Similarly, the Applicant accepts that Greater Dandenong's gaming statistics are, on the whole, well above the State and metropolitan averages.

#### **THE MATERIAL BEFORE THE COMMISSION**

12. The Applicant provided the Commission with the following material to assist it in assessing the social and economic impact of the application:
  - 12.1. Socio-Economic Impact Report, prepared by Mr Nick Anderson of NBA Group Pty Ltd, dated October 2013;
  - 12.2. Gaming Expenditure Estimate Report, prepared by Mr Michael Clyne, dated 25 September 2013;
  - 12.3. Witness Statement of John Anthony Meehan, President of the Noble Park RSL Sub-Branch Incorporated, dated 7 October 2013; and
  - 12.4. Witness Statement of Mark Gerard Wilkinson, General Manager of the Noble Park RSL Sub-Branch Incorporated, dated 7 October 2013.

#### **NBA Report**

13. The Applicant engaged Mr Nick Anderson, a Director of NBA Group Pty Ltd, to prepare a social and economic impact statement to accompany the application. Mr Anderson gave evidence at the hearing of the application and was cross-examined. The Commission accepts that Mr Anderson is qualified to give an informed opinion on the likely social and economic impacts of this application.

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<sup>8</sup> Indexed to CPI



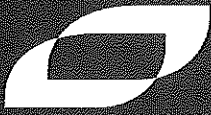
14. Mr Anderson gave evidence that the RSL was established in 1956 and has remained at its current location since. The Applicant prides itself on its community presence and has a particular focus on the welfare of Vietnam veterans and their families. The RSL venue consists of a large bistro, bar area, members lounge and function area, gaming room with 30 EGMs and an extensive back of house area which includes a large kitchen, meeting rooms and management office.
15. The RSL opened its gaming room in 1993 with 35 EGMs, however after the introduction of caps on gaming machines during the mid-2000s, the Applicant was required to reduce the number of EGMs operating at the premises to 30. The RSL's planning approval to operate up to 35 EGMs remains in force and the gaming room at the venue has ample room to accommodate an additional 5 EGMs.
16. Mr Anderson told the Commission that the additional revenue that would be gained from an additional 5 EGMs would be used to further the Applicant's work in the community, with a particular focus on its welfare services. The Applicant also aspires to purchase the welfare office site which it currently rents from a deceased estate on commercially favourable terms. The Applicant has intended to purchase this property for some time but due to declining gaming revenue and increased operating expenses, has been unable to.
17. Mr Anderson told the Commission that this was not a case where approval of the application would result in large capital expenditure or a significant increase in employment, but was one of strengthening an organisation which has a considerable positive impact on the community, and without which, many members of the community would be worse off.
18. Mr Anderson noted that while socio-economic statistics of Greater Dandenong are concerning, there has been modest improvement in the level of disadvantage over the last three Census periods. Mr Anderson expects this improvement to continue as the municipality transitions from an industrial precinct to an outer suburb of Melbourne. Additionally, Greater Dandenong has been, and continues to be, the focus of a number of Council and State Government growth strategies aimed at improving the socio-economic standing of the municipality. Notwithstanding these projects, Mr Anderson conceded that the improvement will be gradual and there is unlikely to be any significant improvement in the level of disadvantage within the municipality over the next decade.



19. In Mr Anderson's opinion, approval of the application is unlikely to result in any increase in problem gambling within the municipality due to the following factors:
- 19.1. Greater Dandenong is a mature gaming market with high levels of gaming density and EGM accessibility. An additional 5 EGMs in the municipality will result in no more than a marginal increase in accessibility and density;
  - 19.2. there will only be a minor increase in expenditure within the municipality as it is predicted that 94% of the revenue to be generated by an additional 5 EGMs at the RSL will be transferred from other gaming venues; and
  - 19.3. the Applicant is an experienced gaming operator with appropriate responsible service of gaming policies and procedures that will mitigate against instances of problem gambling.
20. In summary, Mr Anderson concluded that approval of this application would not have a detrimental social and economic impact on the community of Greater Dandenong.

***The Clyne Report and Mr Richard Whitehouse***

21. The Applicant engaged Mr Michael Clyne to provide an estimate of the expenditure that would be generated by an additional 5 EGMs at the RSL. The Clyne Report is based on 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.
22. Mr Clyne was not available to give evidence on the day of the hearing of the application. In the absence of Mr Clyne, the Applicant called Mr Richard Whitehouse. Mr Whitehouse is a Director of PVS Australia Proprietary Limited, a consulting firm which employs the Geotech Model for predicting gaming expenditure. Mr Whitehouse was engaged by Mr Clyne to prepare a Geotech Model prediction for this application. As Mr Whitehouse has been involved in the preparation of the expenditure prediction, the Commission accepts that, in this instance, Mr Whitehouse is qualified to give evidence as to the outputs of the Geotech Model.
23. Mr Whitehouse told the Commission that the Geotech Model predicted that:
- 23.1. an additional 5 EGMs at the RSL would result in increased expenditure of approximately \$450,901;
  - 23.2. of this expenditure, approximately 94.5% will be transferred from existing gaming venues within Greater Dandenong and neighbouring municipalities;



23.3. the impact of transferred expenditure will be spread amongst many gaming venues, with no one venue predicted to be impacted by a reduction in revenue of greater than 0.63%; and

23.4. after taking into account expenditure transferred from gaming venues within and outside of the municipality, it is predicted that gaming expenditure will rise by \$22,356 in Greater Dandenong in the first twelve months of operation.

24. The Commission accepts the prediction of the Geotech Model to be reasonable in this case.

***Mr Mark Gerard Wilkinson and Mr John Anthony Meehan***

25. The Applicant called the following two witnesses to give evidence as to the operations of the RSL and the charitable work the Applicant conducts in the community:

25.1. Mr Mark Gerard Wilkinson, General Manager, Noble Park RSL Sub-Branch; and

25.2. Mr John Anthony Meehan, President, Noble Park RSL Sub-Branch and Senior Vice-President of the Vietnam Veterans RSL Sub-Branch.

26. Mr Wilkinson has been General Manager of the RSL for 18 years and is responsible for overseeing the operations of the RSL, its staff and its members. Mr Wilkinson told the Commission that the Applicant currently has 912 members, of which 612 are either service or affiliate members.

27. Mr Wilkinson told the Commission that the Applicant has many aspirations, including a large scale renovation of the RSL and measures to increase its membership base; however these were contingent on the financial stability of the Applicant. The Applicant is heavily reliant on gaming as a revenue stream and has suffered in recent years through a decline in expenditure and high gaming machine entitlement repayments. An additional 5 EGMs at the RSL will bolster the financial position of the Applicant, allowing it to work towards its aspirations and continue to increase its welfare services in the community.

28. Mr Wilkinson provided the following examples of services and events available to members and the wider community at the RSL, including:

28.1. a day club for members known as the 'Red Gum Day Club' which provides weekly activities (including subsidised meals) designed to promote social activity between members who may otherwise feel isolated in the community;

28.2. a monthly Morning Melodies club;



- 28.3. weekly Tai Chi sessions; and
  - 28.4. a weekly commemoration service for servicemen and women who were killed in Vietnam, which is well attended by locals and the wider Victorian community.
29. Mr Wilkinson gave evidence that these events are provided to members either free of charge or at a subsidised rate. The RSL also provides use of its function facilities to community groups free of charge.
  30. Mr Wilkinson told the Commission that the Applicant currently has 21 employees, ranging from the ages of 19 to 60. The majority of the staff are hired on a part-time or casual basis and work between 15 to 20 hours per week. Mr Wilkinson did not anticipate that approval of this application would result in any additional employment at the RSL.
  31. In terms of responsible service of gaming, Mr Wilkinson told the Commission that the Applicant adopts and enforces the RSL Responsible Gambling Code of Conduct and Australian Hotels Association Self-Exclusion Program. According to Mr Wilkinson, there are approximately 250 persons self-excluded from the RSL, however the vast majority of these exclusions did not originate in the RSL but are persons who have opted to exclude themselves from a large geographic area which includes Noble Park.
  32. Mr Wilkinson told the Commission that there are at least two staff members on the gaming floor at any one time and all staff are required to have current Responsible Service of Gambling certificates. Mr Wilkinson did not believe there to be any concerns regarding problem gambling at the RSL and is in regular contact with Gambler's Help Southern who also provide staff training at the RSL.
  33. Mr John Anthony Meehan is President of the Applicant and has held this role for approximately 2 years. Mr Meehan has served on the Committee of the Applicant since 1995 and has also held the position of Pension and Welfare Officer.
  34. Mr Meehan told the Commission that the RSL was established for the purpose of maintaining the welfare of veterans, widows, their dependents and the elderly, and has a particular focus on veterans of the Vietnam War. Mr Meehan gave the Commission many examples of the support it provides to members, their families and the community, including:
    - 34.1. assistance with applying for welfare and pension entitlements;
    - 34.2. hospital and house visits for those who are ill, vulnerable or socially isolated;
    - 34.3. locating short-term accommodation in circumstances where a person has been





displaced; and

- 34.4. the provision of food vouchers, furniture and the payment of utility bills for those who are in financial difficulty.
35. The Applicant currently operates its Pension and Welfare office from a property located behind the RSL. This site is rented on commercially favourable terms to the Applicant, however there is a desire to purchase the property to ensure that the Pension and Welfare Office does not need to be relocated at a future date. The site is currently owned by a deceased estate which is willing to sell the property to the Applicant (should the Applicant be able to raise the necessary funds).
36. In addition to welfare support, the Applicant donates \$1,500 per year to an education program in Vietnam which enables 6 people to attend university to complete courses which would benefit the Vietnamese community. The Applicant also provides cash and in-kind support to local schools, charities and organisations wherever possible, however the strained financial position of the Applicant limits this support.

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

37. There is often a large degree of overlap between economic and social impacts of applications to operate EGMs. The Commission considers it useful for the purpose of balancing community benefits and detriments that a thorough analysis and identification of the economic and social impact on the community be undertaken.
38. The Commission accepts that approval of this application will result in an increase in gaming expenditure at the RSL of approximately \$405,901 in the first 12 months of operation. The Commission also accepts that, due to the maturity of the Greater Dandenong gaming market, the majority of this expenditure will be transferred from other venues within the municipality. The Commission considers that the Geotech Model's predicted transfer percentage of 94.5% to be not unreasonable.
39. Accordingly, it can be expected that approximately 5.5% or \$22,324 of the predicted increase in expenditure at the RSL will be new expenditure. In the context of a municipality with a high gaming machine density and high levels of gaming expenditure, such an increase is nominal. As such, the Commission considers there will only be a nominal benefit associated with this application through economic stimulus.



40. In terms of the economic costs of the application, the Commission similarly considers these to be nominal. Approval of the application will result in a small loss of gaming revenue for a number of gaming venues. However, the Commission notes that the predicted loss in revenue for these venues is, in all cases, less than 1% and therefore unlikely to dramatically impact the financial position of these venues. In any event, the Commission sees it preferable that an organisation with a community focus and charitable goals, such as the Applicant, is the beneficiary of gaming revenue.
41. 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**

42. Wherever accessibility to EGMs is increased, there is always a risk of an increase in problem gambling, which leads to other economic costs such as lost productivity, increased health and social service requirements and other social costs. While the Commission accepts that approval of this application will result in a small increase to accessibility, the Commission considers this to be insignificant in a municipality with a mature gaming market and high gaming density.
43. The Commission accepts that Greater Dandenong is amongst the most disadvantaged municipalities in Victoria, with gaming statistics that are well above the metropolitan and State averages. Such factors are warning signs and suggestive of a municipality where problem gambling may be prevalent and the impacts of problem gambling greatly felt. However, having regard to the minimal increase in new gaming expenditure that will be generated, the Commission is not satisfied that approval of this application will impact on this situation.
44. The Commission considers the key social benefit of this application to be the strengthening of the financial position of the Applicant. The Commission was impressed with the welfare services that the Applicant provides to its members, their families and the wider community. Organisations such as these are particularly important in municipalities suffering above average levels of disadvantage. The Applicant has a very strong impact on the day-to-day lives of those who are assisted by its welfare and community work which is well regarded by the Commission, and its continuation is a clear benefit to the community of Greater Dandenong.
45. After considering the social benefits of the proposal, balanced against the detriments, the Commission considers that, on the balance, the likely social impact of the proposal will be positive.



## CONCLUSION

46. The no net detriment test in section 3.4.20(1)(c) of the Act requires the Commission to weight the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the wellbeing of the relevant community will be either neutral or positive.<sup>9</sup>
47. After consideration of the material put forward by the Applicant, it is concluded that the social and economic impacts of the proposal are likely to be positive.
48. 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, so far as is reasonable, take measures to prevent problem gambling. 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 herein of Mr Bruce Thompson, Chairman and Mr Ross Kennedy, Deputy Chairman.***