

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 Rankindi Pty Ltd for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises the Baxter Tavern Hotel Motel, 117 Baxter-Tooradin Road, Baxter from 30 to 45 gaming machines.

Commission

Miss Gail Owen, Deputy Chairman

Ms Kate Hamond, Commissioner

Appearances

Mr Peter O'Farrell of Counsel for the Applicant (instructed by Trecola Lawyers)

Ms Jenny Macaffer and Mr Peter Sibley for Mornington Peninsula Shire Council

Mr Justin Ghattas as Counsel Assisting the Commission

Date of Hearing

29 April 2014

Date of Decision

20 May 2014

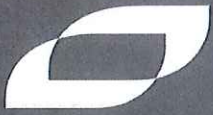
Decision

The application is granted.

Signed

Miss Gail Owen

Deputy Chairman



REASONS FOR DECISION

INTRODUCTION

1. This is an application by Rankindi Pty Ltd (**the Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Baxter Tavern Hotel Motel, 117 Baxter-Tooradin Road, Baxter (**the Tavern**), from 30 to 45.
2. The relevant municipal authority is Mornington Peninsula Shire Council (**Council**).

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* (**Act**). The Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and some members of some communities.¹ For this reason the Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some and harm for others. In particular, the balance is maintained by requiring an applicant wishing 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.²
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.³

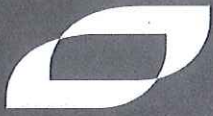
THE MORNINGTON SHIRE COUNCIL AND THE BAXTER TAVERN HOTEL MOTEL

5. The Shire of Mornington (**Mornington**) is a metropolitan Local Government Area located approximately 80 kilometres south of Melbourne and includes the major townships of Mornington, Hastings, Flinders and Rosebud. Mornington occupies three Statistical Local

¹ See: s 1.1(2) of the Act.

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

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



Areas⁴ (SLAs): Mornington Peninsula – South, Mornington Peninsula – East, Mornington Peninsula – West.

6. Mornington is subject to a municipal cap of 1,127 EGMs⁵. Currently there are 17 gaming venues in the municipality operating a total of 806 EGMs. The Tavern is one of 5 venues approved for gaming within the Mornington-East SLA. If this application is granted, the installation of 15 additional EGMs at the Tavern will take the number of EGMs operating in Mornington to 821.
7. Mornington has an average of 6.66 EGMs per 1,000 adults which is 20% more than the metropolitan average and 15% more than the State average. Expenditure on EGMs in the Mornington municipality for the 2012-13 financial year was \$78,899,226 per machine, equating to an average expenditure per adult of \$581, which is 12% more than the metropolitan average and 19% more than the State average. However, gaming expenditure in Mornington has decreased by 21.79% in real terms over the last five years compared with a 17.11% decrease in metropolitan Victoria over the same period.
8. The Mornington – East SLA is ranked 59th out of the 79 metropolitan SLAs on the SEIFA scale for disadvantage,⁶ indicating that the SLA in which the Tavern is located exhibits some signs of disadvantage. When broken down into a Census Collection District level, 8% of collection districts within a 5km radius of the Tavern are in the first quintile of disadvantage, indicating that there are few areas of significant disadvantage in the areas surrounding the Tavern. The Commission accepts that the municipality of Mornington exhibits some signs of disadvantage, but shows few signs of disadvantage in the areas surrounding the Tavern.

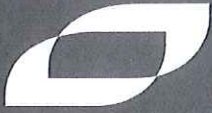
The Baxter Tavern Hotel Motel

9. The Commission was told the Applicant had obtained the leasehold of the Tavern in 1996 and carried out renovations in 2009 at a cost of approximately \$2 million. This included an expansion of the bistro, new air conditioning, new kitchen and bar refrigeration systems and refurbishment of the toilets.
10. The facilities at the Tavern include a 300 seat bistro, outdoor dining with seating for 50 patrons, public bar with TAB and Keno terminals, drive through bottle shop, gaming room, small

⁴ 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.

⁵ 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.

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



function room, and 6 motel rooms. The Applicant allows community and sporting groups to use the function room free of charge.

11. The Tavern provides some nightly meal specials, in combination with a generally low-priced menu. Evenings where meal specials are available generally experience a higher level of patronage.
12. The Applicant plans to use revenue generated from the additional EGMs to improve its financial position and the physical appearance of the Tavern. The replacement of carpet in the public bar and gaming room will occur immediately if the Application is granted. The Applicant also intends to develop the gaming room, add 6 rooms to the accommodation facilities and retire debt acquired at the time of the renovations in 2009 to allow further development of the Tavern.

THE MATERIAL BEFORE THE COMMISSION

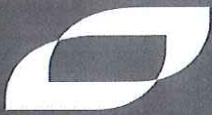
13. The Applicant provided the Commission with material in support of its application, including:
 - a) Social and Economic Impact Assessment, prepared by Mr Rhys Quick of URBIS, dated January 2014 (**Urbis Report**);
 - b) Gaming Expenditure Estimate Report prepared by Mr Tim Stillwell of Moore Stephens Accountants and Advisers (**Moore Stephens Report**), dated 22 January 2014;
 - c) Witness Statement of Mr John Stuart Wilson, company director of the Applicant, dated 23 January 2014.
14. Council provided the Commission with material in support of its position that the application should be refused, including:
 - a) Social and Economic Impact Statement, dated 9 April 2014;
 - b) Mornington Peninsula Shire Responsible Gaming Strategy, September 2001;
 - c) Mornington Peninsula Consultative Committee on Gaming – Terms of Reference, May 2013;
 - d) Mornington Peninsula Shire Responsible Gaming Strategy 2007 – Issues and Background Paper, January 2007;
 - e) Community Survey – Community Attitudes to Electronic Gaming Machines (EGMs or Pokies), undated;



- f) Street Survey Results, undated;
 - g) Correspondence from PACE (Peninsula Advisory Committee for Elders), 7 March 2014;
 - h) Correspondence from Frankston City Council to Mornington Peninsula Shire supporting Council's objection to the Application, 1 April 2014;
 - i) Correspondence from City of Casey to Mornington Peninsula Shire Council supporting Council's objection to the Application, 18 March 2014; and
 - j) Note from Agnes Simmons, President, St Vincent de Paul Society of Langwarrin, undated.
15. The Commission also considered an Economic and Social Impact Report dated April 2014 and an undated Pre-Hearing Inspection and Compliance Report, both prepared by Commission staff.

Social and Economic Impact – Evidence of Mr Quick, URBIS

16. The Urbis Report stated that:
- a) Mornington residents are generally considered to not be disadvantaged, and that residents in the three SLAs relevant to this application do not experience signs of high socio-economic disadvantage;
 - b) while the demographic residing within the 5km radius from the Tavern is characterised by a slightly lower household income compared with State levels, these levels are higher than those across Mornington;
 - c) the average age of residents in the area close to the Tavern is lower than the average age for Mornington, and more in line with the average for metropolitan Melbourne generally;
 - d) the principal economic and social costs of the application relate to the potential increase in problem gambling;
 - e) the increase in EGMs will have a limited impact on problem gambling, given that the EGM offering forms a small part of the overall facilities available at the Tavern and the lack of disadvantage of most local residents would likely translate to a lower likelihood of problem gambling behaviour occurring.



17. Mr Quick stated that the economic and social benefits of the application, such as improvements to venue facilities, access to more EGMs in peak times, and the ability to maintain community contributions in the face of increasing taxes, would outweigh any costs, such as the potential for an increase in problem gambling behaviour.
18. Mr Quick concluded that approval of the application would have a neutral social and economic impact on the community of Mornington.

Likely EGM expenditure – Evidence of Mr Stillwell, Moore Stephens

19. The Moore Stephens Report estimated that, based on the performance of the existing EGMs in the venue, their utilisation rate and the attractiveness of the venue, an additional 15 EGMs would generate additional annual revenue of between \$230,755 and \$282,034 of which approximately 50% would be transferred from existing venues within Mornington and the neighbouring City of Frankston with the residual 50% being new expenditure.
20. Mr Stillwell calculated the increase in overall gaming expenditure in Mornington to be no more than 0.5%, with net machine revenue at the Tavern of \$249 per EGM per day; which is well below the State average of \$357.
21. The Commission accepts the estimates provided by Mr Stillwell as reasonable estimates of likely EGM expenditure at the Tavern, if the application were granted.
22. Mr Stillwell considered that an increase in EGMs would not have a detrimental impact on Mornington, and would be an important measure in allowing the venue to continue to provide community contributions and maintain financial stability.

The Baxter Tavern – Evidence of Mr Wilson, Director

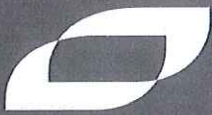
23. Mr Wilson gave evidence about the operation of the Tavern and the intended use of the additional revenue which would be generated if the application were granted.
24. Mr Wilson outlined his experience in the hospitality industry, with particular emphasis on his operation and management of the Tavern for over 17 years. Mr Wilson gave evidence that he has been an active participant of the Council facilitated gambling committee for approximately 15 years.
25. The Commission was provided with a substantial list of local community organisations which have received contributions from the Tavern and local businesses that have benefited by doing business with the Tavern. Mr Wilson made a particular point of his efforts to purchase local produce and use local service providers.



26. Mr Wilson also indicated that the provision of low cost, high quality bistro offerings was a burden on the profitability of the Tavern, which had a cost-of-goods for bistro sales of 40% of the sales, which is substantially higher than the 28-31% Mr Wilson indicated was industry standard.
27. Mr Wilson indicated that the number of EGMs the subject of the application was based on the anticipated level of patronage.
28. Mr Wilson also outlined the close relationship he has with local police in ensuring the Tavern remains a safe and comfortable destination for patrons; particularly families which make up the bulk of the Sunday lunch crowd.
29. Mr Wilson gave evidence that the minimum return-to-player percentage would not decrease, despite the proposed amendments relating to gaming returns which would allow a decrease in the player return. Mr Wilson stated that lowering the return-to-player ratio would lead to patrons gaming elsewhere and, even if that assumption proved incorrect, the cost of doing so would outweigh the benefit.
30. In concluding his evidence, Mr Wilson emphasised that his focus remained the provision of a high quality food and beverage offering at a moderate prices and he anticipates that the improvements to the bistro and gaming room and the additional EGMs will lead to increased patronage and the need for an increase in staff.

Social and Economic Impact – submission of Mornington Shire Council

31. Council argued that the social and economic costs of the application outweighed the benefits presented by the Applicant and the application should be refused.
32. Council considered that the average number of EGMs in Mornington was already excessive when measured against both total population and the adult population, as compared with the State and Greater Melbourne figures.
33. Council consultation with local social and welfare support services indicated that these agencies struggle to meet the needs of vulnerable people in Mornington and any increase in problem gambling caused by the additional EGMs would stretch already scarce resources
34. Council also disputed the basis for the estimate of gaming expenditure and utilisation of EGMs at the Tavern. Council considered the estimates in the Moore Stephens Report to be understated and actual expenditure will have a greater impact on the level of disadvantage in Mornington.



35. In relation to the Tavern's gaming room utilisation statistics, Council indicated that taking 50% as peak utilisation (as opposed to 70% which is usual) created a false perception that patronage of EGMs at the Tavern is high
36. Council stated that any increase in EGMs should be accompanied by an increase in community contributions as the expected increase in gaming expenditure and problem gambling was not otherwise offset resulting in a higher level of detriment to the municipality.
37. Council concluded that, for the reasons set out in paragraphs 31 to 36, the Application should be rejected.

LIKELY ECONOMIC IMPACT OF APPROVAL

38. The Commission accepts that there is unlikely to be a significant increase in gaming expenditure within Mornington as a result of the approval of this application. Expenditure derived from those pursuing gaming as a recreational activity is legitimate consumption expenditure and has an economic stimulus. However, expenditure derived from problem gaming is an economic burden leading to social costs such as a loss in productivity and an increase in health and social service requirements.
39. The Commission considers there to be a slight economic and social benefit in strengthening the financial position of the Tavern so that it may continue its offering and improve its facilities. Mr Wilson's policy of supporting local businesses also provides some economic stimulus within the municipality.
40. While the Commission is satisfied that the increase in gaming revenue will be used to improve the facilities at the Tavern, which is a benefit, it is not one to which the Commission gives much weight.
41. The Commission accepts that an increase of EGMs at the Tavern would create 2 to 4 full time equivalent jobs in the gaming room and bistro area which, based on the composition of the current staff, are likely to be drawn from the local community
42. The reduction of debt, of itself, is not seen by the Commission as a benefit to the community and can be given no weight.
43. The Commission accepts that there is potential for economic disbenefit through increased problem gambling. This potential is limited by the low level of the expected revenue from the additional EGMs, the location, size and nature of the venue and the responsible gaming practices of the Applicant.



44. Accordingly, the Commission considers that there will be a neutral economic impact on the municipality if the application is approved.

LIKELY SOCIAL IMPACT OF APPROVAL

45. The Commission accepts the Tavern is a destination venue frequented by older members of the community and considers it provides a social benefit to the community in this respect. This is offset by the social disbenefit of problem gambling.
46. In coming to this conclusion, the Commission considered the evidence of Council in relation to the level of disadvantage in Mornington and the potential for an increase if the Application were granted. The Commission acknowledges the overarching responsibility of Council to safeguard the community from an increase in EGMs if Council believes it to be detrimental.
47. The Commission notes the evidence of Mr Wilson in relation to his Responsible Gaming policy at the Tavern, as well as his participation on the Council's gaming committee for over 15 years. Mr Wilson's evidence was helpful in demonstrating the Applicant's awareness of the potential for an increase in problem gambling as a result of granting this Application.
48. The Commission concludes that there will be a neutral social impact on the community if the application is approved.

CONCLUSION

49. After weighing the likely social and economic benefits and disbenefits to the municipality, the Commission determines to grant the Application.

The preceding paragraphs are a true copy of the Reasons for Decision of Miss Gail Owen, Deputy Chairman and Ms Kate Hamond, Commissioner.