



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 Rubicon Hotel Motel Pty Ltd, for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises, the Rubicon Hotel, 1362 Taggerty Road, Thornton, Victoria, from sixteen (16) to twenty-five (25) electronic gaming machines.

Commissioners: Miss Gail Owen, Deputy Chairman
Mr Robbie Kerr, Commissioner

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

Ms Anna Clarke as Counsel Assisting the Commission

Date of Hearing: 1 September 2014

Date of Decision: 26 September 2014

Decision: That the application be granted.

Signed:

Miss Gail Owen
Deputy Chairman

REASONS FOR DECISION

INTRODUCTION

1. This is an application by Rubicon Hotel Motel Pty Ltd (**the Applicant**) for an amendment to its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Rubicon Hotel (**the Hotel**) located at 1362 Taggerty Road, Thornton, from 16 to 25 EGMs.
2. The relevant municipal authority is the Shire of Murrindindi (**the Shire**). The Council advised the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) on 28 July 2014 that it did not intend to make a submission in support of or in opposition to the the application.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. A venue operator may make a request to the Commission for an amendment to its licence conditions under section 3.4.18 of the *Gambling Regulation Act 2003* (**Act**). Section 3.4.20 of the Act lists matters to which the Commission must have regard in determining the application. Relevantly, section 3.4.20(1)(c) 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. The test will be satisfied if, following the weighing process, the net economic and social impact of approval on the well-being of the relevant community will be either neutral or positive.¹
4. 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. It is for this reason that the Act includes safeguards to ensure that an appropriate balance is struck between accommodating lawful and responsible gambling and minimising the harm caused by problem gambling.²

THE MATERIAL BEFORE THE COMMISSION

5. The Applicant filed the following documents in support of its application:
 - a completed application form to amend a venue operator's licence (vary gaming machines), dated 29 May 2014;

¹ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, 435.

² See *Gambling Regulation Act 2003*, s 1.1(2).

- a completed application form for approval to modify a gaming machine area in an approved venue, dated 29 May 2014 (indicating the proposed layout of EGMs, if approved);
- a social and economic impact assessment prepared by Ms Colleen Peterson, Director of Ratio Consultants Pty Ltd, dated June 2014;
- an expert's report prepared by Mr Tim Stillwell of Moore Stephens Accountants and Advisors, dated 18 June 2014;
- a witness statement by Mr Leigh James Barrett, Director of the Leigh Barrett and Associates Pty Ltd, dated 12 June 2014;
- a witness statement by Mr Darren James Thomas, Director of the Applicant, dated 20 June 2014.

6. The Commission also had before it two reports prepared by Commission officers, being:

- a statistical economic and social impact report dated August 2014; and
- a pre-hearing inspection and compliance report dated 20 August 2014.

THE SHIRE OF MURRINDINDI

7. Based on the material before the Commission:

- the Hotel is located in Thornton within a rural municipality located approximately 100 kilometres north-east of Melbourne and covering an area of 3,879 square kilometres;
- the Shire, at the 2011 Census date, had a population of 11,813 adults;
- the major centres within the Shire include Alexandra, Yea, Eildon, Thornton and Kinglake.
- in terms of social and economic disadvantage, the Shire is ranked as the 45th least disadvantaged of all 79 Victorian Local Government Areas(LGAs) according to its SEIFA ranking³ with Thornton and Alexandra having SEIFA scores below the median SEIFA score for Victorian suburbs;
- it is generally accepted for a Hotel located in rural Victoria, that the majority of the venue's gaming patrons will be drawn from residences within a 5 km radius of the venue (excluding a variable percentage of tourists). The majority of the Statistical Areas - Level 1⁴ (**SA1s**)

³ The Socio-Economic Indexes for Areas (SEIFA) is a product developed by the Australian Bureau of Statistics that ranks areas in Australia according to relative socio-economic advantage and disadvantage. Indicators are chosen based on education, employment, income, families and housing and are combined to produce an index score in order to rank and compare areas in Australia.

⁴ SA1 is the second smallest geographic area as defined by the Australian Statistical Geography Standard (ASGS) and are the smallest unit for the processing and release of ABS Census data. SA1s usually have a population of between 200 to 800 persons, with an average of 400.

within this radius are in the second and third quintiles of SEIFA disadvantage, suggesting that the patron catchment area of the Hotel experiences some relative disadvantage.⁵

GAMING EXPENDITURE IN THE SHIRE OF MURRINDINDI

8. The Shire is subject to a municipal limit of 111 EGMs. The Hotel is currently the only venue licensed to operate EGMs within the Shire.
9. The Shire is generally characterised by below average and decreasing levels of gaming expenditure as compared with state averages. Based on the material before the Commission:
 - the Shire has an EGM density of 1.35 per 1,000 adults which is 74% less than the rural average and 78% less than the state average;⁶
 - gaming expenditure in the Shire for the 2013/14 financial year totalled approximately \$1.23 million, with an average expenditure per adult of \$104 which is 67% less than the rural average and 81% less than the State average; and
 - trend analysis of gaming expenditure in the Shire indicates that gaming expenditure has decreased by 21.44% in real terms⁷ over the past 5 years, a rate of decrease which is slightly less than the rural municipality average (22.45%).

THE RUBICON HOTEL

10. The Hotel is located on Taggerty Road within the township of Thornton. Thornton has a resident population of 361 (as at the 2011 Census date). The Hotel currently operates 16 EGMs which were introduced in the Hotel in 1993.
11. The Hotel comprises:
 - a bistro with a seating capacity for 200 patrons;
 - a sports bar with a TAB and an outdoor deck;
 - a function area including a dance floor;
 - a gaming room with 16 EGMs with an external smoking area;
 - a drive-through bottle shop; and
 - 16 standard motel units and 12 three bedroom units.
12. The Hotel also provides the local post office and Tattsлото outlet.

⁵ As SEIFA is a ranking of disadvantage, a SA1 ranked in a lower decile (e.g. 1st or 2nd) suggests relative disadvantage, whereas a SA1 ranked in a higher decile suggest an absence of relative disadvantage.

⁶ The rural average being 5.27 gaming machines per 1,000 adults, and the state average being 5.83 gaming machines per 1,000 adults.

⁷ i.e. adjusted to CPI

Social and Economic Impact Assessment – Ms Colleen Peterson, Ratio Consultants Pty Ltd

13. Ms Peterson's report outlined the current offerings of the Hotel and noted that since its construction in 1962, little work had been done to the Hotel. The Applicant took over the Hotel in June 2013, and since that date has upgraded the sports bar, introduced an additional outdoor area and had Fox Sports installed.
14. During the 2013/14 financial year the Applicant provided \$2000 in cash contributions to the local football club and \$500 in-kind contributions to the local community. In addition, the Applicant provides the use of its venue for various local groups including local Council presentations and the local High School's Deb training.
15. The report outlines the proposed redevelopment of the Hotel which is to be undertaken in two stages, and is contingent on the approval of this application. Stage 1 of the works includes the refurbishment of the 12 three bedroom family units (including painting, carpet, furnishings, new furniture and bathrooms) and updating the 16 standard motel rooms (including new painting and carpets). Stage 2 of the works includes replacing bistro furniture, installing a fire place, extending the outdoor deck, introduction of a children's play area and installing bistro/function partitions.
16. The Applicant will also provide an additional \$10,000 in community contributions to local charities and/or community groups. The report also stated that it is expected that the redevelopment proposal will create an additional 1.5 FTE (0.75 in house-keeping, 0.5 in bistro/function area and 0.25 in beverage services), as well as short term employment for subcontractors during the construction stages.
17. Ms Peterson's report summarised the potential social and economic benefits of the application as:
 - the redevelopment and refurbishment of the Hotel's accommodation at the cost of approximately \$520,000;
 - an increase in community contributions of \$10,000 for the life of the additional entitlements;
an increase in employment with all positions likely to be filled locally due to the Hotel's relatively remote location;
 - increased and improved offering for tourists including a better standard of accommodation;
 - an increase in complementary expenditure of approximately \$50,000 which would provide some minor stimulus to the local economy;

- increased access to gaming and choice for those wishing to play EGMs without causing any harm to themselves or others;
- an increase in gaming expenditure which will provide a minor stimulus to the economy; and
- short term supply contracts for other businesses due to the redevelopment of the Hotel.

18. Ms Peterson also outlined the economic and social disbenefits, being

- the possibility of increased problem gambling and expenditure by problem gamblers given that the additional nine EGMs will increase the total number of EGMs at the Hotel by 56%;
- the proximity of additional machines to an area of relative disadvantage and the possibility of a decrease in the community wellbeing;

19. Ms Peterson stated in her report that the main disbenefit of the application is the increased risk to problem gambling. However in her view this risk is mitigated by the relatively small size of the gaming room which will allow for surveillance of all patrons, the current low utilisation of the current gaming machines and the continued provision of a full range of non-gambling entertainment and recreation facilities on offer at the Hotel. Further, the existing operational hours of the Hotel provide for a minimum break in play of nine hours, which is more than the statutory requirement of four hours.

20. Ms Peterson's report concluded that the additional nine EGMs would have a slightly positive net social and economic impact on the local community.

Evidence of likely gaming expenditure – Tim Stillwell, Moore Stephens Accountants and Advisors

21. The Applicant engaged Mr Stillwell of Moore Stephens to provide an estimate of the gaming expenditure expected to be generated by an increase from 16 to 25 EGMs at the Hotel.

22. Mr Stillwell report concluded that:

- an additional nine EGMs at the Hotel would increase the gross gaming expenditure by between \$104,463 and \$174,105 for the first 12 months of trade post the installation of the additional EGMs;
- of this additional expenditure, approximately 10% is expected to be expenditure transferred from other venues; and
- after transferred expenditure is taken into account, total gaming expenditure in the Shire is expected to rise by between \$94,017 and \$156,695 per annum.

23. Mr Stillwell told the Commission that, although there were no direct gaming venue competitors within the Shire from which transferred expenditure would be derived, it was reasonable to assume an implied transfer rate of 10% which would represent the transfer of gaming activity by Shire patrons who currently attend gaming venues outside the Shire and those who visit the Hotel as tourists.

Evidence from the Applicant – Mr Darren James Thomas

24. Mr Thomas gave evidence about the Hotel's current operations and facilities, the tourism opportunities of the Hotel, the community contributions the Hotel currently makes and its Responsible Service of Gambling (RSG) practices. Mr Thomas is the sole director of the Applicant and is also a qualified chef. He has been involved in the hospitality industry and management of gaming machine venues for almost 20 years.

25. Mr Thomas told the Commission that he purchased the business of the Hotel on 24 June 2013. He stated that the Hotel is very important to Thornton and its business is strongly influenced by tourism given its proximity to Lake Eildon and local trout farms. Mr Thomas stated that he saw the purchase of the Hotel as a great opportunity and that his family has worked hard to become integrated and accepted within the local community.

26. Mr Thomas stated the strengths of the Hotel as its provisions of quality food and its capacity to cater for large groups in the Bistro. He saw the major weakness as the current state of the accommodation. He told the Commission that often there is insufficient availability during peak times due to the nature of the current standard of the some of the Hotel rooms. Of the 12 family three bedroom units, only four are habitable and, while all 16 single units are useable, they are of a low standard and he receives regular feedback that they are outdated and therefore they do not get much repeat business.

27. Mr Thomas gave evidence to the Commission that the Applicant currently distributes \$2,000 per annum to the local football club and makes in kind contributions to the value of \$500 in the form of meal vouchers. The Hotel also provides free use of the venue for community groups and holds regular raffles to raise money for a variety of local sporting and charitable organisations.

28. The Commission heard that should this application be granted Mr Thomas will increase the community cash contributions to \$12,000. In addition to the \$12,000 cash contributions. Mr Thomas intends to hold regular bingo sessions at the Hotel with all the proceeds being donated to local charities.

29. As outlined in Ms Peterson's report, the Hotel proposes to redevelop and enhance the current accommodation facilities. Mr Thomas provided the Commission with a quotation on the

renovation of 12 three bedroom family room units and refurbishment of 12 single room units totalling to \$520,000 inclusive of GST. It is anticipated these works would be completed within 2 years of the commencement of the additional EGMs. Mr Thomas told the Commission that the redevelopment is subject to approval of this application as it is not otherwise financially viable. Further, the Hotel intends to complete the other refurbishments within 3 to 4 years at an estimated cost of approximately \$127,000.

30. Upon the completion of the redevelopment Mr Thomas stated the direct increase in employment at the Hotel to be the equivalent of 1.5 FTE with additional short term employment during the development stages. Mr Thomas anticipates that most of these jobs will come be filled from residents within the Shire.
31. Mr Thomas told the Commission that he viewed the requirements concerning the provision of RSG seriously. He stated that he had recently met with Gamblers Help and that the Hotel adheres to the recently developed RSG policy. Mr Thomas stated he has had recent experience with a problem gambler who had self-excluded. On that occasion he initiated the Hotel's procedure by reporting the breach to the Australia Hotel Association website. The Applicant has also engaged Mr Leigh Barrett to review the Hotel's policies, procedures and compliance.
32. The Commission questioned Mr Thomas regarding a recent breach to the RSA training register requirements detected upon an inspection undertaken by the Commission. Mr Thomas stated that while the soft-copy of the register was up date, he had not updated the register in hard copy. As Mr Thomas was not at the Hotel at the time of the inspection, the Hotel was unable to provide the updated register to the Inspectors. He stated that he has now rectified this breach.

Evidence from the Mr Leigh James Barrett

33. Mr Barrett was unable to attend the inquiry and the Commission admitted his witness statement into evidence in his absence.
34. Mr Barrett statement indicated that the Hotel would be regarded as a 'very small' gaming venue, and in his opinion, would be comparatively unattractive to potential problem gamblers. Further, he stated that the size and the layout of the gaming room allows for excellent lines of sight from the bar and the cashier's station to all areas of the room, thereby maximising surveillance of the room by all staff.
35. Mr Barrett considered the Applicant keen to ensure that all staff were eager to interact with customers whenever the opportunity permitted, and believes this component is key to promoting familiarity between staff and patrons. In turn, this facilitates easier interaction by

staff with customers who may display signs of distress or unacceptable behaviour which may be indicative of a potential problem gambler.

36. Mr Barrett concluded that he was confident the Applicant is committed to ensuring the services offered by the Hotel are provided in a responsible manner with an emphasis on venue wide customer care.

FINDINGS BY THE COMMISSION

37. The Commission notes that there is a degree of overlap between economic and social impacts of applications to operate EGMs. However, the Commission considers it useful to identify and analyse the economic and social impacts separately to arrive at a net position for each before reaching its final determination.⁸

Likely Social Impact of Approval

38. Wherever accessibility to EGMs is increased there is 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. The Commission accepts that there is a potential for some social downside if the application is approved through possible increased problem gambling.
39. While the Commission accepts that a potential increase in EGM expenditure within a community brings with it an inherent risk of an increase in problem gambling, the Commission considers that, given approval of this application will result in the operation of nine additional EGMs, the modest increase in expenditure is unlikely to lead to a rise in problem gambling within the Shire. This is due to the Hotel having low EGM utilisation rates and net machine revenue. These indicators point to a lower risk of an increase in problem gambling.
40. The Commission also considers that the measures that the Applicant has in place to identify and assist problem gamblers will further mitigate the risk of problem gambling. The Commission was not presented with any evidence to demonstrate that the operation of this venue is conducive to problem gambling and has been given no reason to conclude that an additional nine EGMs will dramatically change the operation or RSG performance of the venue.
41. The Commission considers the redevelopment and refurbishment of the Hotel is a benefit as it will enhance the offering of the Hotel, particularly the Stage 1 works with the increased availability of higher quality accommodation. Further, the Commission considers that Stage 2 works will enhance the current offerings to the community of the Shire.

⁸This is consistent with the approach undertaken by Justice Bell in *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275

42. The Commission accepts the Applicant's commitment to increase its cash contributions to the community to \$12,000 as a positive social benefit. While the Commission notes that the Applicant has offered to include this increase in cash contributions as a condition on the venue operator's licence, the Commission is satisfied with the Applicant's undertaking given at the hearing and, in this instance, will not endorse a condition on the licence.

43. The Commission concludes the social impact of approval of this application, based on the evidence before it, to be slightly positive.

Likely Economic Impact of Approval

44. The Commission notes that it is never possible to quantify the exact amount of revenue that would be derived by additional EGMs or the amount drawn from other venues. However the Commission considers Mr Stillwell's estimated transfer percentage of 10% is not unreasonable having regard to the locality of the Hotel and the possibility of tourists from outside the Shire utilising the venue. The Commission therefore accepts that approval of this application will result in an increase in the new net gaming expenditure of somewhere between \$94,000 and \$156,700 in the first twelve months.

45. The Commission considers there to be a marginal economic benefit associated with this application through an increase in gaming expenditure within the Shire. The Commission considers gaming expenditure (except that associated with problem gambling) to be legitimate consumption expenditure undertaken by users that are enjoying a recreational activity. The Commission notes that the Productivity Commission considers this associated consumer surplus to be the largest source of benefit from gaming.⁹

46. The Commission notes that increased machine choice and a small local employment benefit (estimated at 1.5 full time equivalent positions) are economic benefits. The Commission considers these benefits to be marginally positive.

47. The Commission concludes that the economic impact of this application, based on the evidence before it, to be slightly positive.

CONCLUSION

48. Having concluded that the likely social and economic impacts of this application will both be slightly positive and the likely economic impacts of this application will also be slightly positive, the Commission considers that the net economic and social impact of approving this application will not be detrimental to the well-being of the community of the Shire of Murrindindi.

⁹ Australian Government Productivity Commission, "Productivity Commission Inquiry Report: Gambling", Volume 1, No. 50, 26 February 2010.

49. 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 and that the matters listed in section 3.4.20(1)(a) and (b) of the Act are also met.

The preceding forty-nine (49) paragraphs are a true copy of the Reasons for Decision of Miss Gail Owen (Deputy Chairman) and Mr Robbie Kerr (Commissioner).

