



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 S & J Bryant Development Pty Ltd for amendment of its venue operator's licence to vary the number of gaming machines at the approved venue, the Golf House Hotel, 920 Doveton Street, North Ballarat from twenty (20) to thirty (30) gaming machines.

Commission:

Mr Bruce Thompson, Acting Chairman
Mr Des Powell, Commissioner

Appearances:

Mr John Larkins of Counsel
(instructed by Bazzani Scully Brand)

Mr Bronte Campbell as Counsel Assisting the Commission

Date of Hearing:

27 February 2013

Date of Decision:

10 April 2013

Decision:

That the application be granted.

Signed:

A handwritten signature in blue ink, appearing to read 'Bruce Thompson'.

Mr Bruce Thompson
Acting Chairman



REASONS FOR DECISION

INTRODUCTION

1. This is an application by S & J Bryant Developments Pty Ltd (the **Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Golf House Hotel, 920 Doveton Street, North Ballarat (the **Hotel**), from 20 to 30 EGMs.
2. The relevant municipal authority is the City of Ballarat Council (the **Council**). On 6 February 2013. The Council provided the Commission with a submission opposing the application. The Council was not represented 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.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 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.
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 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.
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 well-being of the community and taking into

¹ See: s 1.1(2) of the Act.



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.²

THE CITY OF BALLARAT AND GOLF HOUSE HOTEL

6. The Hotel is within the City of Ballarat (**Ballarat**), a regional Local Government Area located approximately 110 kilometres west of Melbourne. Ballarat comprises four statistical local areas³ (**SLAs**), Ballarat – North, Ballarat – Inner North, Ballarat – Central and Ballarat – South. The Hotel is located in the Ballarat – Central SLA.
7. Ballarat is subject to a regional cap of 663 EGMs⁴. Currently, there are 623 EGMs operating across 14 approved venues. In terms of gaming density, Ballarat has 8.15 EGMs per 1,000 adults, which is 9% more than the regional average and 41% more than the State average of 5.77.
8. Recently, the Commission approved an increase in EGMs at the Craig's Royal Hotel, Ballarat from 37 to 45. While that application has been granted, the venue operators are yet to increase the number of machines at the Craig's Royal Hotel. However, assuming the approval will be implemented in the near future, there will be 631 EGMs operating within Ballarat with an EGM density of 8.25 EGMs per 1,000 adults. Approval of this application will result in a further increase of the EGM density of 1.5% to 8.38 EGMs per 1,000 adults.
9. Ballarat has an average gaming expenditure per adult of \$732 which is 17% more than the regional average and 22% more than the State average. The Commission notes that gaming expenditure within Ballarat has decreased by 17.8% in real terms (indexed to CPI) over the past 5 years.

² *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [247] - [249].

³ 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.

⁴ 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.



10. The Ballarat – Central SLA is ranked 27th out of the 41 regional SLAs in Victoria on the SEIFA Index for Disadvantage⁵, which suggests that there is a moderate level of disadvantage within the SLA when compared with other regional municipalities. When broken down into a Census Collection District (CCD) level, 14% of CCDs within a 2.5km radius of the Hotel are in the first quintile of disadvantage and 40% are in the second quintile of disadvantage which indicates that the Hotel is situated in an area of disadvantage, with pockets of significant disadvantage.
11. The Commission also notes that there are seven other gaming venues within a 2.5km radius of the Hotel operating a total of 276 EGMs. As such, there is considerable access to EGMs in the area surrounding the Hotel.

THE MATERIAL BEFORE THE COMMISSION

12. 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.

Mr Stephen Bryant

13. Mr Stephen Bryant is a director of the Applicant and gave evidence at the hearing of the application. Mr Bryant has been in the hospitality industry in Ballarat for 14 years and is also the current owner and operator of the Bunch of Grapes Hotel and Boatshed Restaurant. This is his first entry into the gaming industry.
14. Mr Bryant told the Commission that the Applicant purchased the Hotel in August 2012 after identifying the Hotel as being rundown, poorly managed and having potential to be returned to its former glory as a popular Northern Ballarat hotel.
15. Mr Bryant gave evidence that the Hotel currently offers a bistro, public bar and sports lounge with TAB facilities, drive through bottle-shop and gaming room with 20 EGMs. The Hotel does not have any conference or function facilities and, in Mr Bryant's opinion, the lack of these facilities means the Hotel struggles to compete with other venues within Ballarat. Mr Bryant told the Commission that the Hotel currently has a limited patronage, the majority of whom are gaming patrons. Mr Bryant wants the Hotel to be a well-rounded venue that is not reliant on gaming revenue.

⁵ 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.



16. Mr Bryant told the Commission he recently undertook a complete redevelopment of the Bunch of Grapes Hotel which has proved to be successful in increasing the popularity of that venue. Mr Bryant plans to complete a similar redevelopment at the Hotel which would transform the venue into a multi-faceted entertainment venue with a focus on providing high-quality function facilities. Mr Bryant told the Commission that he has obtained bank finance, contingent on the approval of this application, to carry out a \$1.6 million renovation of the Hotel which would include:
- a new function room that would cater for between 60 – 70 seated patrons;
 - a children's entertainment room and playground;
 - expanded bistro, lounge, sports lounge and bar area;
 - refurbishment of the exterior of the Hotel and the addition of verandas and porticos on the east, south and west sides of the Hotel; and
 - a new bar connected to the gaming room.
17. Mr Bryant told the Commission that a redeveloped venue would result in the hiring of an additional 12 full-time equivalent staff to service the additional facilities the Hotel would provide.
18. In terms of the Hotel's role in the community, Mr Bryant told the Commission that the Hotel anticipates it will provide \$15,000 in cash contributions to community and sporting groups by the end of 2013. Should this application be approved, Mr Bryant told the Commission that the Hotel would increase this amount to annual cash contributions totalling \$30,000 per annum (indexed to CPI) for the life of the gaming machine entitlements.
19. Mr Bryant told the Commission that, as he was new to the gaming industry, he has engaged the services of Progressive Venue Services Australia Pty Ltd (**PVS**) to assist in regulatory compliance matters, venue audits and to develop a site specific gaming policy. Since purchasing the Hotel, Mr Bryant has also retained the services of the venue's previous manager, Ms Melissa McGrath, who has considerable experience as a staff member in gaming venues. Mr Bryant told the Commission that he believes in surrounding himself with the best people in the industry to ensure that the venue is compliant with its regulatory obligations and this will assist to mitigate against the risk of problem gambling.



Ms Melissa McGrath

20. Ms Melissa McGrath is the Manager of the Hotel and gave evidence at the hearing of the application. Ms McGrath was employed by the Hotel's previous owner in 2010 and has held the position of Manager since February 2012. Prior to her employment at the Hotel, Ms McGrath was a gaming attendant at Zagame's Ballarat Club, a gaming venue with 105 EGMs, for a period of four and a half years.
21. Ms McGrath told the Commission that, when compared to the previous owners of the Hotel, Mr Bryant's attitude towards responsible service of gambling and regulatory compliance is excellent. Ms McGrath gave evidence that since the Hotel changed hands, she has been encouraged to develop a relationship with the local Gamblers Help organisation and now has regular contact with its Venue Support Worker. Ms McGrath estimated that she would speak with Gamblers Help once a fortnight to once every three weeks.
22. In terms of the on-going relationship the Hotel will have with Gamblers Help, Ms McGrath told the Commission she had arranged to have at least four face-to-face meetings with the Venue Support Worker and two staff training sessions per year.
23. Ms McGrath gave evidence that the gaming room of the Hotel is constantly monitored by staff who are familiar with the Hotel's regular patrons. Ms McGrath believes that the Hotel's staff are well trained and will be able to continue to effectively monitor patrons with an additional 10 EGMs at the Hotel.

Mr Andrew Jeynes

24. Mr Andrew Jeynes is the Responsible Gambling Manager with PVS and gave evidence at the hearing of the application.
25. Mr Jeynes told the Commission that he had been engaged by the Applicant to develop a responsible gambling policy and compliance management system for the venue. Additionally, PVS has been engaged to conduct a quarterly audit of the venue to assess its regulatory compliance performance.
26. Mr Jeynes told the Commission that, as part of his engagement with the Hotel, he has worked closely with the venue manager, Ms McGrath, as well as the local Gamblers Help Venue Support Worker. According to Mr Jeynes, he has had four to five meetings with Gamblers Help and has specifically tailored the venue's responsible gaming policy to deal with issues that are



unique to the venue and the municipality. Mr Jeynes also told the Commission that he has completed an initial review of the Hotel and its gaming policies and, in conjunction with Gamblers Help, has completed a training session for all gaming staff.

27. In terms of the on-going arrangement between PVS and the Hotel, Mr Jeynes confirmed that PVS will conduct on-going responsible service of gambling policy and procedure sessions, customer engagement training and undertake random testing of staff of their knowledge of the venue's policies and procedures. Mr Jeynes told the Commission that he was currently in discussions with the venue operator and Gamblers Help as to whether all members of staff, not just the gaming staff, should be required to partake in these sessions.
28. In terms of venue auditing, Mr Jeynes told the Commission that every three months PVS will conduct an audit of the venue that will review compliance with all regulatory requirements, the venue's responsible gambling register and self-exclusion register and seek feedback from Gamblers Help, staff members and management.
29. In Mr Jeynes' opinion, the venue operator has an excellent attitude towards responsible service of gambling and is committed to ensuring their venue is compliant with all regulatory requirements and will, as far as is possible, work to minimise the risk of incidents of problem gambling.

Social and Economic Impact

30. The Applicant engaged Mr Rhys Quick, a director of Urbis Pty Ltd, to prepare a social and economic impact statement to accompany the application. Mr Quick gave evidence and was cross-examined. The Commission has regularly accepted that Mr Quick is qualified to give an opinion on the likely social and economic impacts of an application to use EGMs.
31. In Mr Quick's opinion the likely impact of the approval of this application on problem gambling in Ballarat will be minimal due to the following factors:
 - while Ballarat exhibits moderate levels of social and economic disadvantage when compared with other municipalities in Victoria, only four CCDs within a 2.5km radius of the Hotel exhibit significant disadvantage, which suggests that the venue is located in a relatively less disadvantaged area of Ballarat;



- the level of disadvantage in the area surrounding the Hotel is, to some extent, skewed by the large proportion of elderly residents in the area who have low levels of income but are not necessarily disadvantaged;
- elderly residents are under-represented amongst problem gamblers⁶ and statistically have a higher resistance to problem gambling;
- Ballarat is located within the Northern Grampians cluster of LGAs which, despite high levels of EGM expenditure, have significantly lower levels of reported problem gambling (0.09%) compared with the Country Victoria average (0.7%);
- residents of Ballarat already have ready access to EGMs and an additional 10 EGMs in an already established venue does not pose any materially greater risk of problem gambling; and
- the Applicant has an excellent attitude towards responsible service of gambling and has engaged PVS to assist in regulatory compliance matters, including regular audits of the Hotel, and to develop a responsible service of gambling policy specific to the venue.

32. Mr Quick's report stated the principal economic and social benefits of the application are derived from the increase in revenue for the Hotel which will allow it to:

- undertake a major redevelopment of the venue, estimated at \$1.6 million, which will bring a significant economic stimulus to the community and create an additional 12 full-time jobs;
- increase the Hotel's current community contributions from \$15,000 to a total of \$30,000 per annum, indexed to CPI;
- provide the community with a rejuvenated and expanded facility increasing opportunities for social interaction, entertainment and community meeting spaces; and
- increase the number of EGMs at the Hotel which will improve choice and accessibility of gaming machines during peak times for those who partake in gaming as a legitimate recreational activity.



33. Mr Quick noted the economic and social disbenefits associated with the application to be:
- inherent with increasing expenditure is a risk of an increase in expenditure that is derived from problem gambling, which is an economic and social burden on the community; and
 - a small loss of revenue for the venues from which expenditure is anticipated to be transferred to this location.
34. Having considered the economic and social impacts of the application, Mr Quick concluded that approval of the application would not result in a social or economic detriment to the local community.

Evidence of likely EGM expenditure

35. The Applicant provided the Commission with an expenditure report prepared by Mr Richard Whitehouse of PVS. Mr Whitehouse is a founding partner of PVS and uses the Geotech Model to estimate EGM expenditure in venues. The Geotech Model is a retail gravity geo-spatial model which has been presented as evidence and accepted by the Commission on numerous occasions.
36. Mr Whitehouse told the Commission that the Geotech Model predicted the annual expenditure on the 10 additional EGMs to be installed in the Hotel to be approximately \$1,354,134 of which 92.8% would be transferred from other venues. Accordingly, should this application be approved, there would be a net increase in EGM expenditure within the municipality of \$97,703 in the first 12 months of trade (a net increase of 0.17% within the municipality).
37. In addition to the prediction of the Geotech Model, Mr Whitehouse provided the Commission with an addendum report which provided three case studies of actual expenditure versus expenditure predicted by the Geotech Model in recent successful applications. The three case studies showed that the Geotech Model over-predicted expenditure in each case by in excess of 10%. Mr Whitehouse stated that the Commission could draw comfort from these case

⁶ Department of Justice, 'A Study of Gambling Victoria; Problem Gambling from a Public Health Perspective', September 2009



studies as they showed that the Geotech Model's outputs are reasonable when compared with actual results and are highly unlikely to under-estimate expenditure.

38. The Commission pauses to note that while over-prediction of expenditure is a comfort in so far as it relates to expenditure that is derived from problem gambling, the vast majority of benefits of applications such as these are funded or supported by the additional expenditure that is generated for the venue operator. Nonetheless, the Commission accepts that prediction of expenditure is a difficult and imprecise task and the Geotech Model has been demonstrated to output predictions that are within the bounds of reason.
39. In terms of transferred expenditure, Mr Whitehouse told the Commission that Ballarat is a mature gaming market with a high level of EGM density both in terms of actual gaming machines and gaming venues that are in a close proximity to each other. Mr Whitehouse stated that these characteristics would lead to a very high transfer rate and in his opinion, the predicted transfer rate of 92.8% was not unreasonable.
40. In recent times, the Commission and the Victorian Civil and Administrative Tribunal have been critical of expenditure estimates and, in particular, estimates of transferred expenditure. Those criticisms remain relevant to this application. The Commission accepts that as there is already ready access to EGMs within Ballarat, it is likely that the vast majority of expenditure will be transferred from other gaming venues. However, the Commission is not prepared to accept a transfer rate as high as 92.8% in this case. The Commission considers it appropriate in this application to adopt a transfer range of between 70% and 85%.
41. Therefore, based on the Geotech Model's output of overall expenditure of \$1,354,134, the Commission considers there is likely to be a net increase in expenditure within the municipality of between \$203,120 and \$406,240. This represents an increase in expenditure within the municipality of between 0.36% and 0.73%.

THE COUNCIL'S SUBMISSION

42. The Council provided the Commission with a submission opposing the granting of this application but was not present at the hearing of the application. It is unclear why the Council did not attend the hearing of the application.



43. While the Commission acknowledges that there is no statutory requirement for municipal authorities to attend the hearing of an application, it is disappointing, and somewhat concerning, when municipal authorities choose to object to an application but not attend the hearing to speak to their material. In circumstances such as these, the Commission (and to a lesser extent, applicant) is left in an invidious position where it is unable to test the material that is put before it, question its assumptions or seek further clarification. For these reasons, while a municipal authority's submission may be of considerable academic merit or raise issues not canvassed in the applicant's material, the Commission must reduce the weight it places on the submission.
44. The Council notes that the Hotel is located in a SLA that is ranked 61 out of 204 SLAs in terms of social and economic disadvantage and in a CCD that is ranked in the third decile of disadvantage for collection districts in Victoria. Neither the Commission nor the Applicant disputes these statements. However, the Commission considers that relative to other parts of Ballarat which exhibit significant disadvantage, and are in the first quintile of disadvantage, the Hotel is situated in an area of lesser concern.
45. Further, the Commission notes that socio-economic disadvantage is not an indicator of where problem gambling is more likely to occur, but how well the community is likely to be able to absorb the economic and social impacts of problem gambling. For the reasons outlined later in this decision, the Commission is not satisfied that approval of this application will materially increase the incidence of problem gambling in the municipality, and therefore, it is unlikely to impact on those disadvantaged areas surrounding the municipality.
46. The Council opposes the application on the basis that, in the Council's view, the Hotel is located in an area of socio-economic disadvantage and in a municipality with gaming expenditure that is considerably higher than the State and Regional averages. The Council concludes that approval of the application will have a neutral or negative impact on the community.

LIKELY ECONOMIC IMPACT OF APPROVAL

47. 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 before undertaking the final analysis.⁷

48. The Commission accepts that approval of this application will result in an increase in gaming expenditure at the Hotel of approximately \$1,354,134. The Commission considers it likely that a substantial portion of this expenditure will be transferred from other venues. The Commission considers it appropriate to apply a transfer range of between 70% and 85% resulting in an increase in revenue within the municipality of between \$203,120 and \$406,240.
49. The Commission considers there to be a marginal economic benefit associated with this application through an increase in gaming expenditure within the municipality. The Commission accepts that gaming expenditure, not associated with problem gambling, as legitimate consumption expenditure undertaken 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.
50. The Commission considers that the redevelopment of the venue will have an economic stimulus for the municipality both in the construction phase and the on-going operation of the improved venue. The Commission also considers the creation of an additional 12 full-time equivalent jobs to service the facilities that will be added to the Hotel to be a considerable benefit.
51. Overall, the Commission accepts that there is potential for some economic disbenefits of the application through possible increased problem gambling expenditure. However, the Commission considers that the Applicant is committed to responsible service of gambling and takes its obligations with respect to harm minimisation seriously. The Commission accepts that the Applicant's attitude towards responsible service of gambling and the policy and management plan developed by PVS will assist in minimising any increase in problem gambling.
52. 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

⁷ 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

53. The risk of an increase in problem gambling is also a social disbenefit. The Commission is satisfied that, with this application, the potential for an increase in problem gambling is minimal due to the small increase in the number of EGMs and the high level of density of EGMs within Ballarat. Residents of Ballarat have ready access to EGMs and it is unlikely that an additional 10 EGMs in this municipality will materially increase the prevalence of problem gambling.
54. The Commission considers increasing the number of EGMs at the venue would provide a moderate social benefit by improving choice and availability of machines in peak periods for those who partake in gaming as a legitimate recreational activity.
55. The Commission considers the increasing of cash community contributions to \$30,000 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 is a social benefit to the community.
56. The Commission considers that the likely social impact of the proposal will be positive.

CONCLUSION

57. 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.⁸
58. 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 Ballarat.



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.

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

Mr Bruce Thompson, Acting Chairman

Mr Des Powell, Commissioner