

# 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 Spazor Pty Ltd for amendment of its venue operator's licence to vary the number of electronic gaming machines at the approved premises, Royal Hotel, 27 Vincent Street, Daylesford, from eighteen (18) to twenty-five (25).

**Commission:**

Mr Ross Kennedy, Acting Chairperson

Mrs Kate Hamond, Commissioner

**Appearances:**

Ms Sarah Porritt of Counsel on behalf of the Applicant (instructed by Bazzani Scully Priddle)

Mr Justin Ghattas as Counsel assisting the Commission

**Date of Hearing:**

26 March 2015

**Date of Decision:**

16 April 2015

**Date of Reasons:**

16 April 2015

**Decision:**

The application be granted.

**Signed:**

**Ross Kennedy**  
Acting Chairperson



## REASONS FOR DECISION

### INTRODUCTION

1. This is an application by Spazor Pty Ltd (**the Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Royal Hotel, 27 Vincent Street, Daylesford (**the Hotel**), from 18 to 25.
2. The relevant municipal authority is the Hepburn Shire Council (**Council**). The Council opposed the application and made submissions to the Commission, but was not represented and did not appear 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 (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. For this reason the Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some and a potentially harmful activity 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, 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.
5. Section 3.4.19 of the Act allows the Council to make a submission addressing the economic and social impact of the proposal on the well-being of the community and taking into account the impact of the proposal on surrounding municipal districts. The Commission is bound to 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.

### MATERIAL BEFORE THE COMMISSION

6. The Applicant provided the Commission with the following material in support of its application:
  - (a) Social and Economic Impact Assessment, prepared by Ratio Consultants Pty Ltd (**Ratio**), dated December 2014;



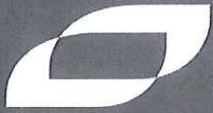


- (b) Addendum to the original Social and Economic Impact Assessment, prepared by Ratio dated, March 2015;
  - (c) Expenditure Report, prepared by Progressive Venue Services (**PVS**), dated November 2014;
  - (d) Witness Statement of David John Canny, Director of Spazor Pty Ltd, dated December 2014;
  - (e) Witness Statement of Leigh James Barrett, Director of Leigh Barrett and Associates Pty Ltd, dated 11 November 2014.
7. In opposition to the application, the Council provided the Commission with an economic and social impact submission dated 26 February 2015.
8. Additionally, the following material, prepared by Commission officers, was considered by the Commission:
- (a) a statistical report titled Economic and Social Impact Report, dated March 2015; and
  - (b) a compliance report titled Pre-Hearing Inspection and Compliance Report, dated 19 March 2015.

#### **CITY OF HEPBURN AND THE ROYAL HOTEL**

9. The Hotel is located at the northern edge of the main shopping precinct near the intersection of Vincent Street and the Midland Highway, Daylesford, within the Shire of Hepburn (**Hepburn**). Major centres include Daylesford, Creswick and Clunes.
10. The Hotel currently comprises a bistro and café, sports bar and TAB, internet café and bar, lounge area, ten four-star accommodation suites, and a gaming lounge with 18 EGMs.
11. Part of the ground floor of the building is occupied by retail outlets that include furniture, lighting, art and jewellery and clothing. Access to these retailers are only from the street, with the Hotel using the residual ground floor area that is not occupied by these retailers.
12. Hepburn is a rural Local Government Area (**LGA**) located approximately 100 kilometres north-west of Melbourne. Hepburn has an adult population of 11,952, which ranks as the 19<sup>th</sup> highest of 35 rural municipalities. The predicted annual rate of population growth of 0.7% between 2011 and 2016 is projected to be lower than the Victorian average of 1.81%. Projections also indicate that by 2016, 48.3% of the population is expected to be over the age of 50.
13. Hepburn is subject to a municipal limit of 112 EGMs.<sup>1</sup> Currently, there are two gaming venues within the municipality with approvals to operate a total of 50 EGMs. Approval of this application would

<sup>1</sup> Pursuant to section 3.4A.5(3A)(b) of the Act, 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.



increase the number of licensed EGMs within Hepburn to 57 and would not exceed the municipal limit.

14. Hepburn has an EGM density of 4.18 EGMs per 1,000 adults, which is 23.8% lower than the rural average (5.49) and 28.2% lower than the State average (5.82). This gives Hepburn the sixth lowest EGM density of the 26 rural municipalities.
15. Hepburn has an average gaming expenditure of \$209 per adult, which is 36.6% lower than the rural average (\$329) and 62% lower than the State average (\$549). Applying the Applicant's estimate of increased gaming expenditure, approval of this application would result in an increase in average gaming expenditure per adult of 6.1%. Overall gaming expenditure within Hepburn has decreased by 20.52% in real terms (indexed to CPI) over the past five years, which is greater than the rural average of 15.56%.
16. Tourism accounts for a significant portion of industry in the Hepburn area. In 2012-13, the tourism industry contributed approximately \$805 million to the Daylesford and Macedon Ranges economy, which was roughly 34% of gross regional product. As a result, tourism is a significant contributor to economic metrics such as employment, and plays an ongoing role in maintaining economic stability in the region.
17. Hepburn is characterised by a mixed socio-economic profile with indices both above and below metropolitan averages. Overall, Hepburn is ranked 28<sup>th</sup> out of 79 LGAs in Victoria on the SEIFA scale of disadvantage,<sup>2</sup> indicating some disadvantage within the LGA.
18. In relation to the immediate surrounding area of the Hotel (i.e. within 5km), 21.4% of SA1s are in the 1<sup>st</sup> quintile of SEIFA scores, with 50% of SA1s being in the 2<sup>nd</sup> quintile. There are no SA1s within 5km of the Hotel that occupy the 5<sup>th</sup> quintile.
19. The unemployment rate in Hepburn is 4.06%, which is slightly lower than the rural unemployment rate of 5.21%. Unemployment in Hepburn has decreased from 5.51% to 4.06% over the past 12 months.

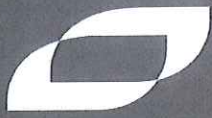
## APPLICANT'S WITNESSES AND SUBMISSIONS

### *Mr David John Canny, Director, Spazor Pty Ltd*

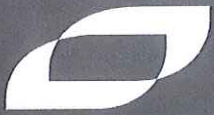
20. Mr Canny is the sole director of the Applicant and has over 20 years experience in the gaming industry throughout Australia. Mr Canny provided a witness statement and gave evidence at the hearing of the application.

<sup>2</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. 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.





21. Mr Canny informed the Commission of other positions he holds within the hospitality industry, including Vice President, Australian Hotels Association (Victoria), as well as sitting on advisory boards for associated industry groups. Mr Canny holds these positions as well as operating the Hotel with his wife.
22. Mr Canny described the significant fluctuations in trade throughout the week at the Hotel, with most business at the premises occur within the 48 hour window between Friday afternoon and Sunday afternoon. Mr Canny indicated that the success of the trade during this time makes the business sustainable. Throughout the rest of the week, the Hotel is particularly quiet as there is little tourist focus during this time. However, Mr Canny also indicated that despite the significantly busier times experienced from Friday through Sunday, the Hotel also services the relatively small local population throughout the week.
23. In relation to Responsible Service of Gaming obligations, Mr Canny indicated that there was an ongoing and high level of RSG compliance, with the Hotel featuring in RSG advertisements and campaigns with the Department of Justice. Mr Canny is also a member of the Responsible Gambling Advisory Group to Ballarat City Council, which provides policy advice as well as acting as liaison body with charitable organisations such as the Salvation Army and Gamblers Help.
24. At a grassroots level, Mr Canny described to the Commission that regular patrons at the Hotel are often Daylesford locals, which makes supervision of patrons and creation of relationships significantly easier for himself and staff at the Hotel. It was the view of Mr Canny that other hospitality venues in the town no longer cater for local and regular patrons, with a shift toward high-end hospitality to service the tourist market.
25. The self-exclusion register at the Hotel indicates that there are 31 patrons who have self-excluded, two of whom are Daylesford residents, and one who continues to utilise other parts of the venue without any breach or incident. The others listed on the self-exclusion register reside in locations outside of Hepburn, such as Ballarat, Geelong, Ararat and Castlemaine. Mr Canny indicated that those from other areas tend not to breach self-exclusions as there are larger venues closer to their locality, and those from Daylesford are usually known to venue staff, which allows for venue staff to manage any self-exclusion matters.
26. Whilst conceding that the current number of EGMs at the Hotel was sufficient to service patrons during the week, Mr Canny indicated that the basis of the Application was to provide a greater number of EGMs particularly to the tourist market in Daylesford, which increases significantly over weekend and holiday periods.
27. Investment in the kitchen and accommodation facilities has already taken place at the Hotel, with a focus on servicing patrons during peak times, such as during weekend trade. It is the evidence of Mr



Canny that the Hotel would not survive on a long term basis if it was unable to service the tourist market and relied on local trade only.

28. Mr Canny indicated to the Commission that he was keen to reinvest any revenue that may result from an increase of EGMs into renovation and restoration works that would occur at the Hotel if the Application were granted. These works include a focus on the restoration of the bluestone entrance to the Hotel, as well as renovations to the bathrooms, internet café, accommodation and balcony area.
29. Mr Canny confirmed to the Commission that an increase in EGMs at the Hotel would also increase the number of full-time equivalent staff to two, particularly during weekend and holiday periods when the Hotel may experience an increased level of patronage.
30. The current contributions made by the Applicant to Hepburn community groups total approximately \$10,000 in cash per annum and approximately \$19,000 of in-kind contributions per annum. If the Application were granted, the Hotel would be in a position to commit an additional \$10,500 per annum, for the life of the entitlements, to community and sporting groups within Hepburn, and in particular, Daylesford.

***Mr Michael Lupton Clyne, PVS Expenditure Report***

31. The Applicant engaged PVS Australia Pty Ltd to provide an estimate of the expenditure that would be generated by an additional seven EGMs at the Hotel. Mr Michael Clyne of PVS Australia gave evidence at the hearing of the application based on the outputs of the Geotech Model.
32. Mr Clyne gave evidence that:
  - (a) an additional seven EGMs at the Hotel would result in increased expenditure of \$225,697 per annum;
  - (b) of this expenditure, approximately 32% would be transferred, mostly from other venues in the Hotel's local network; and
  - (c) after taking into account new expenditure and expenditure transferred from gaming venues within Hepburn and neighbouring LGAs, gaming expenditure in Hepburn would rise by approximately \$153,084 in the first 12 months of operation (an increase of 6.1% of the total gaming expenditure within Hepburn for the year ending June 2014).
33. Mr Clyne noted that whilst there was a particularly low level of transferred expenditure, there were only two gaming venues in Hepburn – the Hotel and the Daylesford Bowling Club. An increase of EGMs at the Hotel would increase the competitiveness of the Hotel and thus draw patrons away from the other venue in Hepburn.





34. Further, Mr Clyne indicated that the vast majority of new expenditure at the venue would be as a result of domestic tourism by residents from other LGAs to Hepburn.
35. Mr Clyne indicated that the Hotel has experienced a decrease in market share of gaming expenditure, whilst the Daylesford Bowling Club has maintained (or slightly increased) their market share since undertaking a refurbishment of the venue and increased marketing from 2012. In the same vein, Mr Clyne expects that an increase of EGMs at the Hotel, and the renovation and improvements that would flow from the subsequent revenue, would have a similar impact on the Hotel as the Daylesford Bowling Club has experienced since 2012.

***Leigh James Barrett, Leigh Barrett and Associates***

36. Mr Barrett is the principal RSG consultant of Leigh Barrett & Associates and gave evidence about the responsible gambling practices at the Hotel and the potential impact the application may have on problem gambling.
37. Mr Barrett gave evidence that he was first engaged by the Group to provide regulatory compliance services for its premises on 10 December 2014. In particular, Mr Barrett undertook a review of responsible gambling policies and procedures, and an audit of the compliance of the Hotel with those obligations.
38. Mr Barrett gave evidence that he has not witnessed, nor is he aware of, any non-compliance with the Hotel's RSG obligations and considers the Hotel has effective procedures in place to deal with instances of problem gambling.
39. Mr Barrett told the Commission that, in his opinion, the Hotel's RSG policy exceeds minimum requirements, pointing to the Hotel's good corporate governance practices and its regular consultation and staff training with Gambler's Help, as well as participation in the promotion of responsible gambling awareness with other organisations.
40. Mr Barrett stated that the proposed renovations would increase the non-gaming offer at the Hotel which, in the view of Mr Barrett, is already quite small. Coupled with gaming room operating hours that are already lower than average, further changes to the Hotel would lessen the focus on gaming and act as a protective factor against potential problem gambling.
41. An increase in the recreational offerings at the Hotel by increasing the size of the bistro, establishing an informal lounge area, use of external areas and diversifying the dining environments at the Hotel for both local patrons as well as the thriving domestic tourist market are all protective factors in reducing the likelihood of problem gambling occurring at the venue.
42. Mr Barrett gave evidence that the venue layout also assisted in maintaining surveillance over the



gaming room, with the location of the cashier station (which is staffed at all times) allowing for staff to observe patrons entering and leaving the gaming room, via the single entry point.

43. Overall, Mr Barrett considered the Applicant had strong and effective RSG policies and procedures in place, and the likely impact of the approval of the application on the level of problem gambling within Hepburn would be negligible.

***Ms Colleen Yvonne Peterson, Ratio Consultants Pty Ltd***

44. The Applicant engaged Ms Peterson of Ratio Consultants Pty Ltd to prepare a social and economic impact statement to accompany the application. In addition to the initial statement, Ms Peterson prepared an addendum report responding to issues raised by Council in their objection to the Application from the Hotel.
45. Ms Peterson gave evidence that whilst the profile of the local area in Hepburn indicates some disadvantage within the local community, the low utilisation rates of EGMs at the Hotel support the evidence of Mr Canny in relation to peak periods occurring over the weekends, generally from the domestic tourist market.
46. Ms Peterson also indicated that the SEIFA scores measuring disadvantage in Hepburn may be skewed by an over-representation of older residents within the community. Ms Peterson described the general link between older people and a lower level of income, and how the resultant SEIFA scores may not reflect the situation "on the ground" in Hepburn.
47. The net machine revenue (NMR) of EGMs at the Hotel is also quite low, in spite of the regular influx of tourists that pass through the venue. Ms Peterson suggested that the density of EGMs in both the venue and LGA contribute to the modest NMR, and when considered with other socio-economic factors such as low unemployment and population age, does not indicate a community that is particularly at risk of problem gambling.
48. Ms Peterson told the Commission that the redevelopment of the Hotel was expected to create an additional two FTE positions across the Hotel, including one in the gaming room, as well as stimulating the local economy through greater uptake in accommodation, and as such, contribute to complementary expenditure in Hepburn.
49. Ms Peterson gave evidence that the patron survey indicated that there were 13 hours of peak utilisation of EGMs (i.e. greater than 70%) over the two-week survey period, all of which, excepting one hour, were during Friday, Saturday or Sunday trade. Along with the below average NMR of approximately \$209 (compared to the rural average of \$329), this indicated that problem gambling was not a significant issue at the Hotel.

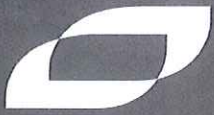




50. Ms Peterson considered the economic benefits of the application would include the increase in gaming expenditure, the redevelopment construction costs of \$215,000, complimentary expenditure of \$280,000, additional community contributions of \$10,500 per annum and the additional employment opportunities at the Hotel. However, she noted that reduced weight could be placed on the redevelopment costs (given the relatively low expenditure) and additional employment opportunities, both at the Hotel and by way of supply contracts (due to the uncertainty that positions will be sourced from the local community and the potential decrease in employment elsewhere).
51. Ms Peterson considered the application would bring social benefits to Hepburn due to the provision of improved facilities at the Hotel for the community, the increased accessibility and variety in EGMs for gaming patrons and the additional employment opportunities at the Hotel.
52. Ms Peterson noted that the most significant negative social impact of the application was the risk of an increase to problem gambling. She stated that, in her opinion, there was unlikely to be any significant change to levels of problem gambling at the Hotel if the application were approved for the following reasons:
- (a) the Hotel offers a diverse range of entertainment options to its patrons (which would be further enhanced through the proposed redevelopment), and gaming would remain an ancillary element of the Hotel's operation;
  - (b) the addition of extra EGMs at an existing venue with very little peak utilisation would not change accessibility to EGMs at the Hotel;
  - (c) the RSG practices employed by the Applicant and the involvement of Leigh Barrett & Associates to assist the Hotel with the management and operation of the gaming room; and
  - (d) the Applicant has successfully operated EGMs for some time and demonstrated its ability to monitor and manage problem gambling behaviour.
53. As a result, Ms Peterson concluded that the risk of increased problem gambling as a direct result of the approval of the application was likely to be low.
54. Based on an analysis of the social and economic profile of the municipality and the anticipated benefits and detriments of the application, Ms Peterson concluded that an additional 7 EGMs at the Hotel would produce a slightly positive net social and economic benefit on the local community, and more broadly to Hepburn, and that the Application should be granted by the Commission.

#### **THE COUNCIL'S SUBMISSION**

55. In opposition to the application, the Council filed an Economic and Social Impact Submission.
56. In this submission, Council indicated the following reasons for their objection to the Application:



- (a) Increased hardship due to increased expenditure on gambling;
  - (b) Concentration of poker machines in Daylesford; and
  - (c) Diversion of expenditure from industry types which generate additional jobs.
57. Council did not appear at the hearing of the Application, and as such, the Commission was unable to seek any further evidence in support of the claims made in the submission.

#### LIKELY ECONOMIC IMPACT OF APPROVAL

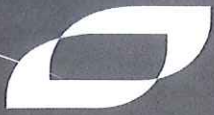
58. There is often a large degree of overlap between economic and social impacts of applications to operate EGMs. The Commission considers it useful for the purpose of balancing community benefits and detriments that a thorough analysis and identification of the economic and social impact on the community be undertaken.
59. The Commission accepts that approval of this application is likely to result in an increase in gaming expenditure at the Hotel of \$225,697 over the first 12 months, consisting of \$153,084 new expenditure and \$72,613 transferred expenditure from other gaming venues. The Commission finds that the portion of the new expenditure not attributed to problem gambling is an economic benefit.
60. The Commission has considered the objects of the Act, which include the promotion of tourism, employment and economic development generally in Victoria, and notes the importance of tourism to the Hepburn region. The Commission accepts that there is a slight benefit to the tourism industry in the area of which this Application impacts.
61. The Commission considers that the proposed redevelopment of the Hotel will offer a marginal economic benefit to the community. The Commission finds that the construction costs directly attributable to this application is limited to approximately \$215,000, which is a relatively small redevelopment cost, and as such, can only carry limited weight as a benefit.
62. The Commission considers that community contributions of \$10,500 per annum in addition to current contributions are an economic benefit to the community.
63. Employment impacts are traditionally viewed (e.g. by the Productivity Commission) as transfers and based on the level of anticipated transferred expenditure. However, in this instance, the Commission considers it likely that any additional staff will be either transferred from other venues, or sourced locally. Given that the increase of employment is relatively low, the Commission considers the proposed increase in employment at the Hotel to be a slight economic benefit.
64. Overall, the Commission considers that there will be a slight positive economic impact on the Hepburn community if the application were to be approved.





## LIKELY SOCIAL IMPACT OF APPROVAL

65. Wherever accessibility to EGMs is increased, there is always a risk of an increase in problem gambling, which leads to other costs such as lost productivity, increased health and social service requirements and other social costs. Accordingly, the Commission accepts there is potential for negative social costs through possible increased problem gambling expenditure.
66. In relation to the vulnerability of the municipality, the Commission finds that Hepburn has low EGM density and EGM expenditure per adult (when compared with rural and State averages) and accepts the evidence of Ms Peterson in relation to the social make-up of Hepburn impacting the measurement of disadvantage in the area.
67. Overall, taking into account the low EGM density and EGM expenditure per adult, together with the socio-economic profile of the municipality, the Commission finds that Hepburn does not present as particularly vulnerable to problem gambling, does not appear to have an excessive number of gaming machines or that Hepburn residents spend an excessive amount on gaming.
68. The Commission also considers that the risk of an increase to problem gambling as a result of this application being approved is limited by the already high accessibility to EGMs and low NMR at the Hotel. The risk is further reduced as the Applicant is an experienced venue operator and regular contributor to best practice in the gaming sphere with appropriate knowledge of harm minimisation and RSG strategies. The Applicant has adopted best practice with a number of protective factors being introduced to minimise the impact of problem gambling at the Hotel.
69. In conclusion, the Commission is satisfied that the potential for an increase in problem gambling is low.
70. The Commission finds that the increased number of EGMs at the Hotel will better serve the needs of gaming patrons through providing a wider choice of EGMs. However, given the current number of EGMs and utilisation rates at the Hotel, the Commission considers this to be a negligible social benefit.
71. In relation to proposed community contributions, the Commission considers the level of community contributions and the impact on local community organisations to be a small social benefit. The Commission notes that, while the Applicant has not proposed that any part of the community contributions be available to bodies concerned with problem gambling, the proposed method of distribution would not preclude such an outcome.
72. After considering the social benefits of the proposal and balanced against the detriments, the Commission considers that, on balance, the likely social impact of the proposal will be neutral.



## CONCLUSION

73. The no net detriment test in section 3.4.20(1)(c) of the Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.<sup>3</sup>
74. After consideration of the material put forward by both the Applicant and the Council, the Commission has concluded that the social and economic impacts of the proposal are likely to be marginally positive.
75. 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 of Mr Ross Kennedy, Acting Chairperson, and Mrs Kate Hamond, Commissioner.***

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<sup>3</sup> *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd & Anor* (2008) 19 VR 422, 435.