



# Victorian Commission for Gambling and Liquor Regulation

## REASONS FOR DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003*, by The Cranbourne Hotel Pty Ltd for amendment of its venue operator's licence to vary the number of electronic gaming machines at the approved venue, The Settlement at Cranbourne, Corner South Gippsland Highway & Camms Road, Cranbourne, from forty-four (44) to fifty-two (52) gaming machines.

**Commission:** Mr Bruce Thompson, Chairman  
Mr Robert Kerr, Commissioner

**Appearances:** Ms Louise Hicks of Counsel on behalf of the Applicant  
(instructed by Williams Winter Solicitors)

Mr Barnaby Chessell of Counsel on behalf of the City of Casey  
(instructed by Gadens Lawyers)

Mr Bronte Campbell as Counsel assisting the Commission

**Date of Hearing:** 1 May & 24 May 2013

**Decision:** That the application be granted.

**Signed:**

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

**Bruce Thompson**  
Chairman



## REASONS FOR DECISION

### INTRODUCTION

1. This is an application by The Cranbourne Hotel Pty Ltd (**the Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at The Settlement at Cranbourne, at the corner of South Gippsland Highway & Camms Road, Cranbourne (**the Premises**), from 44 to 52 EGMs.
2. The relevant municipal authority is the City of Casey Council (**the Council**). The Council opposed the application and was 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.<sup>1</sup> For this reason the Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some and 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.<sup>2</sup>

<sup>1</sup> See: s 1.1(2) of the Act.

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



## THE CITY OF CASEY AND THE SETTLEMENT AT CRANBOURNE

6. The City of Casey (**Casey**) is a Metropolitan Local Government Area located approximately 40 kilometres south-east of Melbourne and includes the major centres of Narre Warren, Cranbourne and Berwick. Casey consists of four statistical local areas<sup>3</sup> (**SLAs**), Casey – Berwick, Casey – Hallam, Casey – South and Casey – Cranbourne.
7. The municipality of Casey is subject to an overall limit of 1,017 EGMs.<sup>4</sup> Additionally, a portion of the municipality, defined as ‘Casey A’, is subject to a regional cap of 614 EGMs. The Premises is located in the Casey – Cranbourne SLA and within the Casey A regional cap. There are currently 588 EGMs operating within the Casey A capped area. Approval of this application will take the number of EGMs operating within Casey A up to 596 and not exceed the regional cap.
8. There are 13 gaming venues within the municipality operating a total of 876 EGMs with a density of 4.47 EGMs per 1,000 adults. This represents an EGM density 20% lower than the metropolitan average and 23% lower than the State average. In terms of gaming expenditure, Casey has an average gaming expenditure per adult of \$643, which is 1% greater than the metropolitan average and 7% greater than the State average. Overall gaming expenditure within Casey has decreased by 17% in real terms (indexed to CPI) over the past 5 years (which is not unusual for a metropolitan municipality), and decreased in real terms by approximately 5.49% per annum per adult.
9. In terms of the social and economic profile of Casey, the municipality is characterised by varying levels of disadvantage. Based on 2011 census data, Casey is ranked 29<sup>th</sup> out of the 79 Victorian Local Government Areas on the SEIFA scale of disadvantage<sup>5</sup>, which suggests that there is a moderate but not concerning level of disadvantage. However, when broken down into a Census Collection District (**CCD**) level, 42% of CCDs within a 2.5km radius of the Premises are in the first quintile of disadvantage and 38% are in the second quintile of disadvantage. The Commission accepts that the area immediately surrounding the Premises is generally disadvantaged, with pockets of significant disadvantage.

<sup>3</sup> The Statistical Local Area (SLA) is an Australian Standard Geographical Classification (ASGC) defined area which consists of one or more Collection Districts (CDs). SLAs are Local Government Areas (LGAs), or parts thereof. Where there is no incorporated body of local government, SLAs are defined to cover the unincorporated areas. SLAs cover, in aggregate, the whole of Australia without gaps or overlaps.

<sup>4</sup> Pursuant to section 3.4A.5(3A)(b) of the *Gambling Regulation Act 2003* the Victorian Commission for Gambling and Liquor Regulation determined, in accordance with the criteria specified in the Minister for Gaming’s Order on 15 August 2012, the maximum permissible number of gaming machine entitlements under which gaming may be conducted in each region.

<sup>5</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.



## CATCHMENT AREA

10. At the hearing of the application, the Commission was presented with differing views by the Applicant and Council as to what it should accept as the relevant catchment area of the Premises.
11. While consideration of the social and economic profile of the municipality and area surrounding the venue is an important aspect of the Commission's assessment of the 'no net detriment' test, the relevant 'catchment area' of the venue is of equal significance. That is, the area or areas within the municipality from which the venues current (and future) patrons are drawn. These are the areas in which the majority of the impacts of an application are likely to be felt.
12. There is evidence to suggest that those who partake in gaming as a recreational activity do so at venues within a 2.5 km radius of their residence in metropolitan areas, and a 5 km radius in regional areas.<sup>6</sup> While the Commission accepts this evidence as a general indicator of a catchment area, there are other factors and data sets which must be considered. For example, while not definitive, a postcode survey of patrons partaking in gaming at a venue is likely to give a useful indication of the venue's catchment area (for gaming purposes). An assessment of a venue's catchment area becomes more difficult in a municipality such as Casey which is experiencing strong population growth in certain areas of the municipality.
13. The Applicant submitted to the Commission that it would be appropriate to adopt a 5 km radius from the Premises<sup>7</sup> due to the following:
  - a survey of the venue's café, bar and TAB patrons was undertaken over a two week period in January 2012 which indicated that 74.9% of the venue's patrons reside within 5 km of the venue<sup>8</sup>;
  - a 2.5km radius does not include a number of suburbs within the municipality which are projected to experience significant population growth in the short to medium term; and
  - the venue is located on Camms Road which is a main arterial road and provides easy access to the venue for residents and future residents of the major growth area of Cranbourne East (the majority of which is outside a 2.5km radius).
14. The Council submitted that the Commission should exercise caution in the reliance that it places on the patron survey undertaken by the Applicant as the survey applies only to patrons

<sup>6</sup> KPMG, 1999, *Longitudinal Community Impact Study*, Victorian Casino and Gaming Authority

<sup>7</sup> A 5 km radius includes the suburbs of Lynbrook, Narre Warren South, Lyndhurst, Cranbourne North, Skye, Cranbourne West, Cranbourne, Cranbourne East, Botanic Ridge, Cranbourne South, Junction Village, Clyde and Devon Meadows.

<sup>8</sup> A total of 1211 patrons were surveyed during the two week period.



that have made a purchase through venue staff and not necessarily gaming patrons who are able to use EGMs without staff interaction. The Council recommended that the patron survey only be used as a 'rough guide' of the venues patrons. The Commission accepts this criticism as reasonable and notes that a survey of gaming patrons would have been of more assistance.

15. The Council suggested that the suburbs of Narre Warren South, Lynbrook, Lyndhurst, Hampton Park and Langwarrin (which are within a 5 km radius of the Premises) should be discounted from the venue's catchment area, as:
  - the patron survey suggested that very few of the venue's patrons come from these suburbs;
  - residents of these areas are more likely to access alternative gaming venues that are within more direct proximity to their homes compared with the Premises; and
  - residents of Narre Warren South, Lynbrook, Lyndhurst and Hampton Park are more likely to head north, towards Berwick and Narre Warren, to access retail services and facilities.
16. In the Council's view, the venue's gaming patrons are more likely to be represented in the patron survey by TAB and bar customers rather than the venue's bistro customers. The Council noted that in excess of 75% of TAB and bar customers came from the postcode area 3977 compared with 69% of the bistro customers. This postcode area includes the suburbs of Cranbourne, Cranbourne East, Cranbourne North, Cranbourne West, Skye, Canons Creek, Devon Meadows, Junction Village, Botanic Ridge and Fiveways.
17. Taking the above into account, the Council concluded that it is likely that the venue's gaming patrons will primarily be drawn from the suburbs of Cranbourne, Cranbourne North, Cranbourne West and Cranbourne East (**the Cranbourne Area**). A smaller proportion of gaming patrons are likely to come from the suburbs to the south of Cranbourne – Botanic Ridge, Cranbourne South and Junction Village.
18. The Commission does not fully accept the premise put to it by the Council that a venue's TAB and bar patrons are more likely to be representative of gaming patrons compared with bistro patrons. Gaming is a recreational pursuit enjoyed by many diverse groups and an assumption that someone who enjoys the TAB facilities of a venue is more likely to partake in gaming than a bistro customer is a generalisation without great analytic force. Moreover, the proposition that in suburbs that rely heavily on cars, people would mostly head north for retail services but would not head south for recreation is unconvincingly asymmetric.
19. Notwithstanding, in this case, the Commission considers it more likely than not that the majority of the venue's gaming patrons are likely to come from the Cranbourne Area in the



short to medium term. This area includes the suburbs of Cranbourne East and Cranbourne North which are likely to experience significant population growth in the future. The Commission notes that this area is serviced by four other gaming venues to the south of the Premises which can be expected to share a similar catchment area. The Commission considers that it is reasonable to assume that a large portion of the venue's patrons that come from the Cranbourne Area will be from the northern parts of this area as the Premises will be the most proximate gaming venue in the region for these residents.

20. Ultimately, it is up to the Commission to exercise its judgement in determining a likely catchment area for a gaming venue. This is a difficult and imprecise task. Having regard to the above, the Commission considers that in this case, it is appropriate to adopt the Cranbourne Area as the relevant catchment area with the notation that a significant portion of patrons are likely to come from the northern parts of the Cranbourne Area.
21. The Commission notes that this area is characterised by mixed levels of disadvantage. The census collection districts in Cranbourne that immediately surround the Premises are, based on SEIFA, considerably disadvantaged and amongst the most disadvantaged in Victoria. However, the suburbs of Cranbourne East, Cranbourne North and Cranbourne West do not show concerning levels of disadvantage.

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

22. 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.

#### ***Social and Economic Impact***

23. The Applicant engaged NBA Group to prepare a social and economic impact statement to accompany the application. Mr Nicholas Anderson, Managing Director of NBA Group gave evidence at the hearing of the application. In addition to the social and economic impact statement, Mr Anderson prepared an addendum report containing statistical data from the 2011 Australian Census, which was not available at the time he prepared his initial report.
24. Mr Anderson gave evidence that Casey is a rapidly developing municipality with strong population growth and varying levels of social and economic disadvantage. Mr Anderson told the Commission that Casey previously relied on primary production as its economic base however, due to its location within the growth corridor of Victoria, Casey is transitioning into a municipality with a retail and residential economic base. Mr Anderson explained that Casey is



an attractive municipality for young couples and families due to relatively affordable house prices and reasonable commuting time to Melbourne's CBD. Mr Anderson noted that the majority of Casey's growth has been in the areas of Narre Warren South, Berwick (South), Lynbrook, Cranbourne East and Cranbourne West.

25. In terms of social and economic disadvantage, Mr Anderson told the Commission that Casey presents as a municipality with mixed levels of disadvantage. At a municipal level, Casey has a SEIFA score of 1006 which indicates a moderate but not an overly concerning level of disadvantage within the municipality. In relative terms, Casey is ranked 29<sup>th</sup> out of the 79 Victorian metropolitan municipalities based on 2011 census data.<sup>9</sup>
26. Mr Anderson noted that the suburb of Cranbourne, in which the Premises is situated, exhibits greater signs of disadvantage with a SEIFA score of 946. Mr Anderson told the Commission that while SEIFA scores can give an indication of relative disadvantage, it is important to consider the range of indicia that SEIFA scores are based on and how those indicia may skew the scores. With relevance to this particular application, Mr Anderson noted that the Premises is within close proximity to schools, large sections of commercial land and the Amstel Golf Course, Cranbourne Landfill site and Cranbourne Racecourse. Such areas are typically land uses that do not represent well in SEIFA mapping and, according to Mr Anderson, are likely to skew the SEIFA scores in the areas surrounding the Premises.
27. Mr Anderson told the Commission that caution should be exercised when comparing SEIFA data between censuses as different statistical indicia has been used in the composition of each data set. However, on a relative basis, Mr Anderson told the Commission that despite a significant level of population growth within the municipality between the 2006 and 2011 censuses, there has been little variation in the rankings of the municipality and areas surrounding the Premises against other areas. According to Mr Anderson, this indicates that the level of disadvantage within the municipality and areas surrounding the Premises has remained stable throughout the region's growth period.
28. Mr Anderson told the Commission that the Premises is located within the heart of Cranbourne and is an important venue for social, entertainment and community gatherings for residents and visitors to the local area. The Premises provides a variety of services including entertainment, accommodation, subsidised meals and function and wedding facilities. The Applicant currently employs 47 casual staff and 9 permanent part-time or full-time staff. The majority of the venue's staff are members of the local community. Should this application be

<sup>9</sup>

In order of disadvantage as measured by the Socio-Economic Indexes for Areas



approved, at least 1 full-time staff member and 4 casual staff members will be recruited.

29. Mr Anderson gave evidence that the Applicant, through the Premises, is a prominent member of the community and provides cash and in-kind donations to various local community and sporting groups. Mr Anderson told the Commission that these contributions are provided on an ad-hoc basis and have not been formally documented. As such, it is difficult to estimate the annual contributions that the Applicant currently provides to the community. Despite this, Mr Anderson reiterated that the venue provides a key social role within the community of Cranbourne.
30. Mr Anderson told the Commission that the Applicant had recently committed to providing \$50,000 within the next 12 months to be used to restore the St John's Parish Hall in Cranbourne which, will be a facility used by all sections of the community once restored. Should this application be approved, the Applicant will provide an additional \$50,000 per annum for two years to the project.
31. Mr Anderson understood that the Applicant would also undertake to formalise its community contributions scheme and would establish a community support fund. The fund would be administered by the Applicant and in conjunction with the Council, and distributions will be made to local sporting and community groups. Mr Anderson told the Commission that the Applicant would commit to providing \$50,000 per annum for a period of seven years (commencing after the Application's donations to the St John's Parish Hall project had ceased) to the community support fund on top of the regular community contributions that the Applicant currently makes.
32. Mr Anderson also told the Commission that the increase in revenue derived from an additional 8 EGMs would be used to improve the facilities of the Premises. According to Mr Anderson, the Applicant plans to redevelop the venue's kitchen to better cope with the demand of its 300 seat bistro. The redevelopment of the kitchen is estimated to cost in excess of \$100,000. Mr Anderson told the Commission that the redevelopment of the kitchen was not contingent on the success of this application but an increase in gaming revenue would allow the redevelopment to occur much more quickly.
33. Additionally, Mr Anderson told the Commission that the Applicant had long-term plans to redevelop the basement of the Premises into a cinema or function centre. However, due to the uncertainty of these plans, Mr Anderson placed no weight on the potential redevelopment of the basement in his assessment of the application.
34. Mr Anderson noted the key benefits of the application to be:





- an increase in employment at the Premises;
  - formalisation of the venue's community contributions program;
  - \$50,000 per annum to be placed in a community support fund for a period of nine years;
  - an increased entertainment offering at the Premises through a greater number and diversity of EGMs; and
  - an increase in gaming expenditure which will provide a positive economic stimulus.
35. Mr Anderson acknowledged that in any application where accessibility to EGMs is increased, there is a risk of an increase in problem gambling. However, in this particular application, Mr Anderson is satisfied that the responsible service of gaming measures that are currently in place at the Premises will mitigate against any risk of an increase in problem gambling. Mr Anderson further noted that approval of this application would not result in the number of EGMs operating in the Casey A area breaching the regional cap of 616 EGMs.
36. Mr Anderson told the Commission that gaming expenditure (indexed to CPI) has fallen by approximately 15% over the last five years and the municipality's population had grown in excess of 2.5% per annum. Mr Anderson concluded that this represented a maturing of the gaming market within Casey, with expenditure per adult reducing significantly. Mr Anderson noted that a reduction in gaming expenditure has been experienced Victoria wide and also noted that this was possibly attributable to legislative changes in gaming regulation and responsible service of gaming practices undertaken by venue operators.
37. Based on an analysis of the social and economic profile of the municipality and the anticipated benefits and disbenefits of the application, Mr Anderson concluded that an additional 8 EGMs at the Premises would not result in a net social and economic detriment to the community of Casey. Mr Anderson further concluded that an increase in gaming machines at the Premises will assist the Premises to cater for an anticipated increase in demand by virtue of the significant projected population growth in the municipality.

### ***Mr John Finning***

38. Mr John Finning and his wife are the owners of the Premises and directors of the Applicant. Mr Finning provided a witness statement and gave evidence at the hearing of the application. The Applicant also owns the Craig's Royal Hotel, a gaming venue with 45 EGMs in Ballarat.
39. Mr Finning told the Commission that he and his wife developed the Premises from a Greenfield site and opened the venue in 1992. Gaming was introduced into the venue in 1994 with 25 EGMs and was later increased to 44 EGMs. Mr Finning gave evidence that the Premises is the smallest gaming venue, in terms of number of gaming machines, in the local



area and sought an additional 8 EGMs to increase gaming capacity, diversity and customer satisfaction.

40. Mr Finning told the Commission that the Premises has a diverse offering with a large food and beverage trade. The venue consists of:
- 26 motel units;
  - 300 seat family bistro with children's playground which is open for lunch and dinner seven days a week;
  - café and casual dining area;
  - drive through bottle-shop;
  - dedicated meeting room; and
  - gaming room with 44 EGMs.
41. According to Mr Finning, the Premises is a destination venue of regional significance and acts as a central point between major regional areas of Victoria such as the Mornington Peninsula, Gippsland and Phillip Island. Mr Finning told the Commission that the venue is often used by local community groups and commercial organisations as a meeting place. In recent years, the Premises has experienced an increase in patronage from the growth areas in Casey, particularly those to the east of the venue.
42. Mr Finning told the Commission that an increase in gaming revenue will enable the Applicant to conduct a refurbishment of the venue's kitchen facilities more quickly than planned and increase the quality and extent of the refurbishment. Mr Finning said that an upgraded kitchen was required to accommodate the increasing demand for the Premises' bistro facilities, which has occurred due to the significant population growth in the area.
43. Additionally, Mr Finning gave evidence that the Applicant had long term plans to further redevelop the site on which the Premises is situated to develop a function centre with cinema facilities. Mr Finning acknowledged that an additional 8 EGMs at the venue would not provide the Applicant with the necessary revenue to immediately realise this goal however, he told the Commission that the additional revenue will be used to prepare feasibility and architectural reports for the long term project.
44. Mr Finning estimated that the Applicant provides approximately \$12,000 per annum in in-kind donations to local community and sporting groups, however told the Commission that the Applicant does not keep an up-to-date register of its community contributions. Mr Finning told the Commission that the venue receives many requests for support or sponsorship from local community and sporting groups. According to Mr Anderson, the Applicant has a policy of



always providing support where the request is *bona fide* and the support will benefit the local community.

45. Mr Finning told the Commission that the Applicant had recently committed to providing \$50,000 this financial year to a community project to refurbish the St John's Parish Hall, a heritage hall located approximately 1 km from the Premises. Mr Finning sees the project as being of considerable benefit to the community as a large number of community groups plan to use the hall once the refurbishment has been completed. Mr Finning told the Commission that the Applicant would provide this contribution regardless of this application but noted that without the benefit of the extra machines sought, it may take longer than 12 months for the Applicant to provide these funds to the project.
46. Mr Finning confirmed the evidence of Mr Anderson that, should this application be granted, the Applicant would commit to providing an additional \$50,000 per annum for two years to the project and formalise its community contributions scheme. A community support fund will be established to which \$50,000 per annum will be provided for a period of seven years (commencing after the Application's donations to the St John's Parish Hall project had ceased).
47. Mr Finning told the Commission that he would be willing to accept a condition on the approval of this application requiring the Applicant to fulfil its promise to make the above donations. Mr Finning provided the Commission with a draft condition which included the following caveat:

*'...subject to review upon any regulatory, structured or tax revisions affecting gambling machine operation or reduction in gaming revenue.'*

Mr Finning told the Commission that the inclusion of such a caveat was simply to reflect the reality that businesses operate in an 'uncertain world' and to afford the Applicant some protection should it suffer an unanticipated reduction in gaming revenue outside of the Applicant's control.

48. In terms of responsible service of gaming, Mr Finning told the Commission that all gaming staff at the venue hold responsible service of gaming certificates and undertake regular staff compliance training. Additionally, gaming staff receive 'on the job' training from the local Gamblers Help Venue Support Officer. Mr Finning told the Commission that a representative from Gamblers Help attends the venue on a weekly basis and has bi-monthly meetings with management staff to discuss problem gambling strategies.
49. Mr Finning does not believe there to be any problem gambling concerns associated with the



Premises and is confident that an additional 8 EGMs would not encourage problem gambling within the venue.

***Evidence of likely EGM expenditure***

50. The Applicant engaged Mr Michael Clyne to provide an estimate of the expenditure that would be generated by an additional 8 EGMs at the Premises. Mr Clyne is an independent gaming expenditure consultant who has appeared before the Commission to give evidence on many occasions.
51. Mr Clyne told the Commission that based on an assessment of the current performance of EGMs in the venue, their utilisation rate and the attractiveness of the venue to recreational gamblers, he estimated that an additional 8 EGMs at the Premises would generate approximately \$508,364 in their first twelve months of trade.
52. Mr Clyne told the Commission that, as Casey is a mature and settled gaming market and the Premises is surrounded by other strong, gaming venues, it is reasonable to expect that a large proportion of the expenditure would be transferred from other gaming venues within the municipality.
53. Mr Clyne estimated that 80% of the revenue that will be generated by the additional EGMs will be transferred from other gaming venues. Accordingly, should this application be approved, Mr Clyne estimated that 20% of the revenue generated, or \$101,672, would be new expenditure to the municipality. This would represent an increase in annual gaming expenditure within Casey of 0.08%.
54. The methodology used for this forecast relies on data taken from utilisation surveys in the gaming room, which identify 'peak' periods where there is potentially excess demand and therefore new machines would be utilised.
55. In this case, the estimate of peak utilisation is on average 22.5 hours per week and this figure is combined with average expenditure for the venue during the 2012 financial year of \$54.16 per hour to arrive at a forecast for new expenditure. The factor or multiplier for venue attractiveness remains at 1.0, as no significant development of the venue is being considered in the short term.
56. Obviously there is inherent uncertainty in any forecasting methodology. However, a cross-check of the projected marginal expenditure associated with this application against current average expenditure at the venue suggests that the methodology employed yields a result that is not unreasonable.



57. The Commission considers Mr Clyne's expenditure estimate to be at the lower end of a range of possible outcomes. The Commission notes that even if new expenditure to the municipality was to be twice as high as Mr Clyne's forecast, the proportional increase to gaming expenditure in Casey would still be very small, and less than the trend rate of decline in EGM expenditure in the municipality.

## THE COUNCIL'S SUBMISSION

58. In opposition to the application, the Council filed a Social Impact Assessment Report prepared by Capire Consulting Group (**Capire**).

### **Mr Matthew Low**

59. Mr Low is a social planner and researcher employed by Capire and gave evidence at the hearing of the application.
60. Much of Mr Low's evidence echoed that of the statistical data presented to the Commission by Mr Anderson, which outlined the social and economic profile of Casey. The Commission does not see a need to repeat those matters, however it is appropriate to indicate where Mr Low raised new matters or differed in opinion with Mr Anderson.
61. Mr Low drew the Commission's attention to a study conducted by Matthew Rockloff, Associate Professor of Psychology at Central Queensland University, of the relationship between gaming patron behaviour and the number of patrons partaking in gaming (**Rockloff Study**).<sup>10</sup> The study found that as the number of players in a gaming room increases, behaviour of individual gamblers is likely to change. Generally, players increase the speed and persistence of their individual gaming. Rockloff hypothesised that this behaviour is drawn from two differing mindsets:
- players overhearing the wins of other players and thinking their next win may be 'around the corner'; or
  - players wanting to be seen as lucky or successful in comparison to other players in the gaming room.

Mr Low suggested that regard should be had to this study when the question of increasing the gaming capacity of a venue arises, as larger gaming venues may increase the incidence of behaviour of the type demonstrated in the Rockloff Study.

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<sup>10</sup> Matthew Rockloff (2010), *The impact of an audience and venue size on poker machine gambling*, Department of Justice (Victoria)



62. While the Commission considers the outcomes of the Rockloff Study to be generally of interest, the Commission notes that the study examines gaming behaviours and not behaviours that are specific to *problem gambling*. It is also unclear to what extent responsible service of gaming policies impact on these behaviours. Further, the Rockloff Study considered large increases in gaming patrons (from 5 to 25 patrons) in the examination of changes in behaviour. This application deals with a much more marginal increase in gaming capacity and is unlikely to produce a similar dramatic change in gaming patron behaviour. It was not demonstrated that this particular increase in EGMs triggered a threshold scale effect: for example, the Rockloff Study risks may already be in place and be managed appropriately with the existing EGMs at the venue. For these reasons, the Commission places little weight on the findings of the Rockloff Study with respect to this application.
63. Mr Low referred the Commission to data obtained from Gamblers Help Southern which demonstrated that, on a per capita basis, the suburb of Cranbourne (2.4 per 1,000 adults) has a high number of Gamblers Help clients when compared with the municipality of Casey (1.2 clients per 1,000 adults) and the Southern Metropolitan Region (1.0 per 1,000 adults). Mr Low suggested that these statistics may be indicative of an increased level of problem gambling vulnerability in Cranbourne.
64. The Commission considers these statistics to be inherently unreliable and notes that Gamblers Help Southern has two service centres within Casey – one of which is located in the heart of Cranbourne. The Commission considers it more likely than not that Cranbourne's overrepresentation in these figures is a product of the service's effectiveness in the community of Cranbourne and the ease in which Cranbourne residents can access the service compared with non-Cranbourne residents.
65. Further, the Commission notes that the suburbs of Cranbourne North (0.6 per 1,000 adults), Cranbourne West (0.3 per 1,000 adults) and Cranbourne East (no reported clients), all of which are in the Council's suggested primary catchment area, are well below the Casey and Southern Metropolitan Region figures. The Commission accepts that there are likely to be problem gamblers in the catchment area of the Premises but is not satisfied, based on this data, that there is an increased level of problem gambling vulnerability in the area.
66. Mr Low considered the positive and negative impacts on the community of the proposed EGM increase at the Premises. Mr Low's assessment of the impacts of approval can be summarised as follows:
- Increasing the number of EGMs at the Premises will increase recreational gaming opportunities, particularly during peak usage periods. Mr Low assesses this as a minor



benefit as the community of Cranbourne has ready access to EGMs through a number of gaming venues;

- An increase in the employment should be seen as a minor benefit. However, Mr Low notes that due to the large amount of transferred expenditure it is likely that there will be a decrease in employment at the venues where expenditure is being transferred from;
- An increase in community contributions by \$50,000 per annum should be seen as a mild social benefit; and
- A possible increase in problem gambling should be seen as a significant social and economic disbenefit, particularly in a vulnerable community such as Cranbourne.

67. Mr Low set out a number of mitigation opportunities that, in his opinion, if adopted would lessen the incidence and impact of problem gambling at the venue. The Commission summarises these below:

- Cease providing cash withdrawal services from the service counter in the gaming room and limit withdrawals to patrons that are making a food or beverage purchase;
- Distributions from the community support fund to be allocated to local community services with a focus on problem gambling services;
- Improve separation between gaming and café bar areas of the venue so that individuals who are susceptible to problem gambling are not encouraged to gamble impulsively by the visibility and sound of gaming machines; and
- Reduce the number of hours that the gaming room is in operation at the venue.

68. While the strategies suggested by Mr Low may indeed be effective in further reducing the risk of problem gaming at the Premises, the Commission was provided with no evidence to suggest that there are currently instances of problem gambling at the venue. Further, the venue in its current operation is compliant with its regulatory obligations and to adopt the recommendations proffered by Mr Low would place the venue at a commercial disadvantage compared with its competitors. It remains open to the Applicant to adopt Mr Low's recommendations but the Commission does not consider it necessary or appropriate to require such measures of the Applicant. The Commission further notes that the venue has an ongoing relationship with Gamblers Help Southern which, according to the Applicant, has not highlighted particular problems at this venue.

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

69. 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.



70. Following the recent comments of the Victorian Civil and Administrative Tribunal<sup>11</sup>, the Commission notes that regardless of what analytic tools are employed, a large element of judgement is necessary in forecasting. Obviously, no model can incorporate the very many real life variables that influence expenditure trends. The Commission notes that it is never possible to quantify with absolute certainty the exact amount of revenue that would be drawn from other venues (indeed, even after the event it is not possible to identify the transfer rate with any confidence).
71. The Commission accepts that approval of this Application will result in an increase in gaming expenditure at the Premises of approximately \$508,000 over the first 12 months. On all of the material presented to it, the Commission considers that a substantial portion of the expenditure to be derived from the additional EGMs will be transferred from other venues.
72. In respect of this application and with the available material and submissions by the parties before it, the Commission considers Mr Clyne's estimated transfer percentage of 80% to be not unreasonable having regard to the maturity of the Casey gaming market and the number of gaming venues in close proximity to the Premises. The Commission considers that it is likely that approval of this Application will result in an increase in the net new gaming expenditure of somewhere in the range of \$100,000 - \$200,000 (which is inclusive of Mr Clyne's estimate). However, the Commission accepts that there will always be some inevitable uncertainty surrounding such a forecast.
73. In this particular application, the Commission does not consider it necessary to discount Mr Clyne's transferred expenditure estimate to add confidence to the level of new expenditure that will be brought to the municipality. The Commission reiterates its comments in paragraph 54 of these reasons that even if new expenditure to the municipality was to be twice as high as Mr Clyne's forecast, the proportional increase to gaming expenditure in Casey would still be very small, and less than the trend rate of decline in municipal expenditure.
74. Further, given that total expenditure in the venue is a function of both fresh and transferred expenditure, it follows that a lower transfer rate would moderate the increase in net new expenditure at the venue. The Commission notes that higher (or lower) expenditure would simultaneously affect benefits as well as costs.
75. The Commission considers there to be a marginal economic benefit associated with this application through an increase in gaming expenditure within the municipality. The

<sup>11</sup> In particular, the decisions of *Mount Dandenong Tourist Hotel Pty Ltd v Greater Shepparton CC* [2012] VCAT 1899 and *Francis Hotel Pty Ltd v Melbourne* [2012] VCAT 1896.





Commission considers gaming expenditure (excepting that associated with problem gambling) to be legitimate consumption expenditure undertaken by a majority of 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.<sup>12</sup>

76. The Commission considers an increase in employment at the venue to be a slight economic benefit. Traditionally, employment impacts are viewed largely as transfers (e.g. by the Productivity Commission), but in the case of a rapidly growing municipality, new jobs offer a small benefit. Additionally, while the proposed new investment in capital works at the venue is somewhat uncertain in timing and scale, it may offer a minor economic benefit.
77. Accordingly, the Commission considers that there will be a marginal positive economic impact on the community if the Application were to be approved.

#### LIKELY SOCIAL IMPACT OF APPROVAL

78. Wherever accessibility to EGMs is increased, there is always a risk of an increase in problem gambling, which leads to other economic costs such as lost productivity, increased health and social service requirements and other social costs. Overall, the Commission accepts that there is a small potential for some social downside of the application through possible increased problem gambling expenditure. While noting the research about venue scale and problem gambling, the Commission considered that this particular proposed EGM increase was not demonstrated to carry a threshold risk.
79. It is not persuasive to compare (as in the Capire Report<sup>13</sup>) the increase in cash community contributions to total EGM revenue<sup>14</sup>, nor can the Productivity Commission's (now somewhat dated) estimate of total EGM revenue attributable to problem gamblers be applied to any particular venue without regard to its history and circumstances.
80. Overall, the Commission is satisfied that the potential for an increase in problem gambling is minimal. The Commission accepts that parts of the venue's likely catchment exhibit significant levels of disadvantage. However, risks of a partly vulnerable community need to be considered against other indicators. The Commission notes that gaming expenditure within the municipality is falling at an above average rate. This is particularly significant in a municipality which is demonstrating large population growth. As total expenditure falls, it is proper to infer

<sup>12</sup> Australian Government Productivity Commission, "Productivity Commission Inquiry Report: Gambling", Volume 1, No. 50, 26 February 2010.

<sup>13</sup> Low M, *Social and Economic Impact Assessment: The Settlement at Cranbourne*, Capire Consulting Group, 6 May 2013.



that problem gambling risks are moderated. Additionally, the Commission notes that this community already has ready access to EGMs and approval of this application will only marginally increase this accessibility.

81. The Commission considers the venue to have appropriate responsible service of gaming policies that mitigate against the incidence 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 8 EGMs will dramatically change the operation and responsible service of gaming performance of the venue.
82. The Commission considers that the proposed contributions to the St John's Parish Hall restoration project and provision of \$50,000 per annum to a community support fund, for a period of seven years, will have a positive social benefit.
83. After considering the social benefits of the proposal, balanced against the detriments, the Commission considers that, on the balance, the likely social impact of the proposal will be neutral.

## CONDITIONS

84. The Commission was provided with written submissions from both the Applicant and the Council as to whether it would be appropriate, should the application be approved, to impose a condition securing the community contributions put forward by the Applicant as part of its proposal.
85. The Applicant submitted that, while the community contributions were an important benefit, they should not be seen by the Commission as determinative. That is, the Commission should come to the view that, even without the provision of additional community contributions, the proposal put forward by the Applicant would not result in a net social and economic detriment to the community of Casey. In the Applicant's submission, the proposed conditions put forth by Mr Finning should not be seen as conditions put in bad faith or a reluctance to make good on his commitment but a sensible approach from a business operator to allow for commercial uncertainties or changes to the regulatory regime. The Applicant submits that the Commission should accept the Applicant is committed to, and indeed will, provide the additional community contributions.



86. The Council submitted that the community contributions proposed by the Applicant are “clouded in uncertainty” due to the caveat suggested by Mr Finning and therefore should be attributed little weight by the Commission. Additionally, the Council submitted that:

*‘...even if the Commission was persuaded as to the sincerity of Mr Finning’s commitment to make the ongoing payments to the community, it must not discount the possibility that the Hotel could be sold to another operator at any time (who may or may not share Mr Finning’s aspirations as to the level of ongoing payments).’*

87. While the Commission considers the Council’s submission to be of weight, particularly that of the uncertainty surrounding the community contributions should the business be sold, the Commission is not satisfied that the provision of community contributions is a matter that tips the balance in this case.
88. This is not to say that the Commission does not expect the Applicant to make the proposed community contributions, indeed the Commission does so expect. Mr Finning has expressed his intention under oath. The Commission notes that a failure to provide the community contributions intended, without good reason, would bring into question the *bona fides* of the Applicant.
89. For the above reasons, the Commission does not consider it necessary to impose a condition securing the community contributions on the approval of this application.

## CONCLUSION

90. 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 wellbeing of the relevant community will be either neutral or positive.<sup>15</sup>
91. After consideration of the material put forward by both the Applicant and the Council, it is concluded that the social and economic impacts of the proposal are likely to be neutral or slightly positive.

<sup>15</sup> Romsey (2008) 19 VR 422, 435.



92. 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 in accordance with its obligations to, so far as is reasonable, take measures to prevent problem gambling. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the Application.

***The preceding paragraphs are a true copy of the Reasons for Decision herein of Mr Bruce Thompson, Chairman and Mr Robert Kerr, Commissioner***