



**DECISION AND REASONS FOR DECISION**

In the matter of an application under section 3.4.17(4) of the *Gambling Regulation Act 2003* by Waurm Ponds Management Pty Ltd, to amend its venue operator's licence to vary the number of gaming machines at the approved premises, the Waurm Ponds Hotel, 213-223 Colac Road, Waurm Ponds, Victoria, from fifty-six (56) to seventy (70) gaming machines.

**Commission:** Gail Owen, Deputy Chairman  
Kate Hamond, Commissioner

**Date of Decision:** 5 April 2013

**Date of Reasons:** 5 April 2013

**Decision:** The application be granted subject to the following condition:

If the Stage Three works (as referred to in paragraph 29 of these reasons) are not substantially completed by 30 September 2013 (or such later date stipulated in writing by the Commission), this approval will lapse and the maximum number of EGMs that may be operated at the premises will revert to 56.

**Signed:**

**Gail Owen**  
Deputy Chairman

## REASONS FOR DECISION

### INTRODUCTION

1. This is an application by Waurm Ponds Management Pty Ltd (the **Applicant**) for an amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Waurm Ponds Hotel (the **Hotel**) located at 213-223 Colac Road, Waurm Ponds, Victoria, from 56 to 70 EGMs.
2. The Hotel is situated within the City of Greater Geelong. By letter dated 6 February 2013, the City of Greater Geelong Council (the **Council**) notified the Commission that it did not oppose the application.
3. On Thursday 28 February 2013, the Commission held a public inquiry to consider the application pursuant to section 28(2)(g)(iii) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011*.

### THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. The Act recognises that, notwithstanding individual rights of self-determination and gaming's recreational legitimacy, gaming on EGMs causes harm to some communities and some members of some communities.<sup>1</sup> It is for this reason that the Act includes safeguards to ensure that an appropriate balance is struck between a lawful and legitimate recreational activity for some and harm for others. Section 3.4.20(1) of the Act sets out the matters to which the Commission must have regard in determining an application of this nature. The Commission has discretion to grant or refuse an application, regardless of whether it is satisfied of the matters set out in section 3.4.20(1).

### THE MATERIAL BEFORE THE COMMISSION

5. The Applicant filed the following documents in support of its application:
  - Social and Economic Impact Statement prepared by Ratio Consultants Pty Ltd, dated October 2012;

- Gaming Expenditure Estimate Report (updated) prepared by Mr Michael Clyne, dated 17 September 2012;
- Gaming Expenditure Estimate Addendum Report prepared by Mr Michael Clyne, dated 25 February 2013;
- Progressive Venue Services Summary Predictions dated February 2013; and
- Witness Statement of Mr Mitchell Koroneos, Director of Waurm Ponds Management Pty Ltd, dated November 2012.

6. The Commission also had before it a statistical report titled Economic and Social Impact Report dated January 2013 (the **Commission Report**), a Pre-Hearing Inspection and Compliance Report and a Size, Layout and Facilities Report; all prepared by Commission officers.

#### **THE CITY OF GREATER GEELONG AND THE WAURN PONDS HOTEL**

7. As at 30 June 2011, the City of Greater Geelong had an adult population of 176,048 which is the highest adult population of the 13 regional municipalities in Victoria and a projected population growth rate of 1.5% over the five years from 2011 to 2016.<sup>2</sup>
8. The City of Greater Geelong is subject to a regional cap of 1,421 EGMs. Currently, there are 25 gaming venues within the City of Greater Geelong operating a total of 1,307 EGMs. Based on the Australian Bureau of Statistics (**ABS**) population estimates from 30 June 2011, the City of Greater Geelong has 7.42 EGMs per thousand adults and is ranked 8th out of the 13 regional municipalities in Victoria in terms of EGMs per thousand adults. If this application is approved it would result in an increase of 1.08% in the number of EGMs per thousand adults in the City of Greater Geelong.

<sup>1</sup> See *Gambling Regulation Act 2003* (Vic), s 1.1(2).

<sup>2</sup> *Victoria in Future*, Population and Household Projections 2011-2031 for Victoria and its region, Department of Planning and Community Development dated April 2012.

9. The City of Greater Geelong has a higher density of EGMs and higher average expenditure per adult when compared to other rural municipalities; having the fourth highest gaming expenditure per adult with an average expenditure of \$662 per adult per year (compared to the regional average of \$627).
10. The City of Greater Geelong Local Government Area (**LGA**) is comprised of 8 Statistical Local Areas (**SLAs**). The Hotel is situated within the South Barwon-Inner SLA.
11. According to the Socio-Economic Indexes for Areas (**SEIFA**) the South Barwon-Inner SLA shows little sign of economic or social disadvantage. SEIFA is a product developed by the Australian Bureau of Statistics to assist in the assessment of the welfare of Australian communities. The SEIFA allows for the ranking of geographical regions, providing a method of determining the level of social and economic well-being in each region. The index is created by combining a number of indicators of disadvantage including low educational attainment, high unemployment, proportion of the population in unskilled occupations and low equivalised household income levels. South Barwon-Inner SLA ranked 7<sup>th</sup> out of 41 regional SLAs, with 41 being the most disadvantaged.

### ***Social and Economic Impact Statement – Ratio Consultants Pty Ltd***

12. The Applicant engaged Ratio Consultants Pty Ltd (**Ratio**) to prepare a social and economic impact statement report. Ms Colleen Petersen gave evidence and was cross-examined at the public inquiry on the contents of the report.
13. The Ratio report summarised the position of the Applicant:
  - On 1 March 2011, the former Victoria Commission for Gambling Regulation (**VCGR**) granted the Applicant conditional approval to amend its venue operator's licence to vary the number of EGMs from 56 to 70.
  - The approval was conditional on the completion of certain improvements to the Hotel.

- The improvements were the renovation and construction of the main bar, sports bar, gambling lounge and alfresco area (**Stage Two**) and the renovation to the main bistro, alfresco areas and the entry from the car park (to the south) and the toilets (**Stage Three**).
- Stage Two works have been completed. However the Stage Three works were delayed due to the Applicant having difficulty in obtaining finance and a significant fraud by employee.
- The Applicant now seeks approval for the additional 14 EGMs prior to the completion of the Stage Three works.

14. Ms Peterson told the Commission that the Stage Three works have expanded and now include a new kitchen, dining room, function room, alfresco dining areas and associated courtyards.

15. In summarising the likely positive economic and social impacts of this application, Ms Peterson told the Commission:

- The Applicant has committed to an additional cash contribution of \$10,000 per annum indexed to CPI<sup>3</sup> as a direct and measurable benefit to the local community.
- The net gaming expenditure to flow from the additional 14 EGMs is expected to increase from \$173,600, predicted for the initial application in 2011, to \$343,995, which represents an overall increase in expenditure of approximately 0.3% in the LGA. However, Ms Peterson accepted that the economic benefit must be discounted due to the possibility that some of this expenditure will be derived from problem gamblers.
- As a result of the Stage Three works additional short term jobs will be created during the construction phase. Ms Peterson told the Commission that this will provide a short term stimulus to the economy of the LGA as the construction company is using local subcontractors.

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<sup>3</sup> The current community contributions are detailed in paragraph 35.

- The additional EGMs will increase the availability of gaming for all members of the local community (and visitors from outside the LGA) who enjoy gaming.

16. Ms Peterson noted that a disbenefit of this application is the possibility of increased incidences of problem gambling and expenditure by problem gamblers. However, she told the Commission that this disbenefit should be given less weight due to the following factors:

- the Hotel is within a patron catchment which show few signs of disadvantage;
- the Responsible Gambling Policy employed by the Applicant will minimise the likelihood of problem gambling; and
- problem gamblers in the area already had access to EGMs at other venues.

17. Ms Peterson concluded that the removal of the condition to allow for the additional 14 EGM to be installed prior to the completion of the Stage Three works will not be detrimental to the City of Greater Geelong.

### ***Evidence of Likely Expenditure***

18. Mr Clyne told the Commission that in 2011 he gave evidence to the VCGR regarding the original application for an additional 14 EGMs at this Hotel and had estimated an increase of expenditure in the first 12 months of operation to be \$868,030. The Commission was told that since that hearing the Hotel had undergone significant changes (including extensive renovations and the installation of a further 21 EGMs) and had experienced changes to its catchment area. Due to these changes, and based on Mr Clyne's experience and assessment of the current performance of EGMs at the Hotel and the attractiveness of the venue to recreational gamblers, he estimated that during the first twelve months of trade, the additional 14 EGMs would generate revenue of approximately \$1,146,651.

19. Mr Clyne estimated that approximately 70% of the additional expenditure would be transferred from other gaming venues within the LGA resulting in estimated new gaming expenditure as a result of the additional 14 EGMs of \$343,995.
20. Accordingly, should this application be approved, Mr Clyne estimates the overall impact on expenditure on EGMs within the LGA would be an increase of 0.3%.
21. The Applicant also submitted a summary report from Progressive Venue Services (**PVS**) which provided an estimate of the new gaming expenditure to be derived from the additional 14 EGMs calculated utilising the Geotech model. The PVS summary estimated that the annual expenditure increase at the Hotel would be \$1,023,746 of which approximately 76% would be transferred from other gaming venues within the LGA.
22. Mr Clyne submitted that the similarities between his predictions and the PVS summary report should provide the Commissions with confidence when assessing his predictions.
23. The Commission does not accept that the comparison provides any further comfort in accepting expenditure estimates or transfer expenditure predictions. The Commission considers that the wide range of factors (including a number of subjective factors) taken into account in estimating transferred expenditure creates difficulties in achieving accurate predictions, regardless of the method or model used.<sup>4</sup>

### ***Evidence from the Applicant***

24. Mr Mitchell Koroneos, the Director of the Applicant, was called to give evidence regarding the reasons for the delay in the Stage Three works.
25. Mr Koroneos acknowledged that when the VCGR made its decision in March 2011, it was a condition of that approval that the additional 14 EGMs were not to be installed prior to the completion of the Stage Two and Stage Three works.

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<sup>4</sup> The subjective factors include: the facilities on offer at surrounding venues, the location of other venues, the local demographics and the overall 'attractiveness' of the surrounding venues based on the Geotech model. The Geotech model is a retail gravity geo-spatial model which has been considered and generally accepted in previous applications before the Commission.

26. Mr Koroneos told the Commission that since March 2011, the Stage Two works had been completed at a cost of approximately \$2,600,000 and stated that, as a result of the Stage Two works, the Hotel now offers:

- a redeveloped bar and lounge area with three pool tables;
- a redeveloped TAB and gaming lounge; and
- an updated alfresco area.

27. Mr Koroneos stated that since these works were completed in February 2012, four additional full time equivalent (FTE) positions had been created, and the redevelopments had proved popular with the patrons resulting in an increase in the total turnover of the Hotel from the previous financial year.

28. The Commission heard that the Stage Three works were delayed because the Applicant was defrauded by an employee which resulted in a delay to the Applicant's ability to obtain the necessary finance. Further, Mr Koroneos stated that the original architect engaged had a fatal heart attack and the management and consulting group went into receivership at the time of starting construction. Mr Koroneos explained that while there had been a number of setbacks the Applicant had now obtained finance and provided the Commission with a letter of offer from the relevant financier.

29. Mr Koroneos stated that the delay had allowed the Applicant time to revise the scope of the Stage Three works to include the construction of a new bistro, lounge, alfresco area and children's play area, rather than simply renovate the existing areas, resulting in the estimated cost of the Stage Three works increasing from \$2,000,000 to \$3,000,000.

30. The Commission heard that the Stage Three works commenced in December 2012 and Mr Koroneos anticipates that they will be substantially completed by August 2013. Mr Koroneos confirmed that the Applicant was amenable to the imposition of a condition to that effect.

31. Mr Koroneos told the Commission that the Applicant currently makes annual cash contributions to a range of community and sporting groups within, and outside, the City of Greater Geelong of \$20,000 per annum. The existing cash contributions



are provided to various sporting groups including the North Geelong Cricket Club, the Highton Bowls Club and the Warrnambool Greyhound Club; and to charities including the Royal Children's Hospital and the "Giver where you live Platinum Sponsorship."

32. If this application is approved, the Applicant will establish the Waurm Ponds Hotel Community Grants Program and make an annual contribution to it of \$10,000 per annum from the commencement of the operation of the additional 14 EGMs. This contribution is intended to be broadly distributed amongst not-for-profit community groups and sporting organisations providing services and facilities to residents of the City of Greater Geelong.

33. The Commission heard from Ms Margaret Spence who is currently the Hotel's manager. Ms Spence told the Commission she spends approximately two and half days a week at the Hotel as she is also the manager of another venue, the Norlane Hotel.

34. While the Applicant did not provide survey evidence that patronage in the gaming room was high or exceeded capacity, Ms Spence did provide the Commission with examples, from her experience, where she estimated that approximately 70 to 80% of the EGMs were being utilised. Due to the increased popularity resulting from the Stage Two works, she believed that patronage at the venue was increasing. However she could not recall any instances where patrons could not obtain access to an EGM.

35. Ms Spence told the Commission that she expected that the installation of an additional 14 EGMs, would result in the employment of an additional two FTEs in the gaming room and, upon completion of the Stage Three works, a further two FTEs would need to be employed at the Hotel.

#### **FINDING BY THE COMMISSION**

36. The 'no net detriment test' in section 3.4.20(1)(c) of the Act requires the Commission to weigh the likely positive economic and social impacts of an application against the likely negative economic and social impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission

concludes that the net economic and social impact of approval on the well-being of the relevant community will be either neutral or positive<sup>5</sup>.

37. There is frequently a large degree of overlap between economic and social impacts of applications to operate EGMs. However, the Commission considers it useful to identify and analyse the economic and social impacts separately to arrive at a net position for each before reaching its final determination.<sup>6</sup>

### ***Social impact of approval***

38. The Commission accepts that an increase in EGM expenditure within a community brings with it an inherent risk of an increase in problem gambling. The Commission is satisfied that it is unlikely that an additional 14 EGMs at the Hotel will result in a material rise in problem gambling within the City of Greater Geelong. Further, the Commission considers that approval of this application is likely to have a minimal impact on gaming patterns and will not increase the availability of EGMs in the community to any significant degree given the existing levels of access within the LGA.

39. The Commission also accepts that a social benefit arises where a Hotel makes contributions to charity and sporting groups. This Hotel's proposed increase in community cash contributions of \$10,000 as a consequence of the grant of this application is a positive benefit. The Commission notes that the Applicant provided a signed undertaking committing it to this community contribution.

40. The Commission considers there will be a neutral social impact on the relevant community.

### ***Economic impact***

41. The Commission accepts that one of the positive economic benefits of granting this application will be that the Applicant will enhance the Hotel by completing the

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<sup>5</sup> Romsey (2008) 19 VR 422, 435

<sup>6</sup> This is consistent with the approach undertaken by Justice Bell in Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation [2009] VCAT 2275

Stage Three works. However, the Commission considers this to be a marginal economic benefit.

42. The Commission considers that, in allowing the installation of the additional EGMs prior to completion of the Stage Three works, a further benefit of granting this application is the increase of 2 FTEs. Further, upon completion of the Stage Three works, a further 2 FTE positions will be created, with the likelihood that most of those employed will be from the local community. The Commission accepts that additional employment will also be created during the Stage Three works which will have a marginal short term economic flow on effect to the LGA.
43. The Commission accepts that approval of this application will result in an increase in gaming expenditure, and considers Mr Clyne's estimate during the first twelve months of trade approximately of \$1,146,651 in additional revenue is reasonable. Further, while the Commission does not accept the predicted transfer rate for the reasons set out above, it considers that a substantial part of the additional expenditure will be transferred from other venues within the LGA
44. The Commission considers that there will be a neutral economic impact on the relevant community.

### **Conclusions**

45. The Commission is satisfied that the net economic and social impact of approving this application will not be detrimental to the well-being of the community of the City of Greater Geelong.
46. Based on the material provided to the Commission prior to and at the time of the public inquiry, the Commission is satisfied that the Applicant has the authority to make the application.
47. The Commission is satisfied that it should exercise its discretion to grant the application subject to the following condition.<sup>7</sup> :
- If the Stage Three works (as referred to in paragraph 29 of these reasons) are not substantially completed by 30 September 2013 (or such later date

stipulated in writing by the Commission), this approval will lapse and the maximum number of EGMs that may be operated at the premises will revert to 56.

**The preceding document is a true copy of the Reasons for Decision of Ms Gail Owen, Deputy Chairman and Ms Kate Hamond, Commissioner.**

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<sup>7</sup> The administrative process of amending the licence will take place at a time subsequent to this decision as allowed by s 3.4.20 of the Act.