



# 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 Zagame's Berwick Springs Hotel Pty Ltd for amendment of its venue operator's licence to vary the number of electronic gaming machines at the approved premises, Berwick Springs Hotel, 288-296 Clyde Road, Berwick, from eighty-five (85) to ninety-five (95).

**Commission:** Miss Gail Owen, Deputy Chairman

Mr Robert Kerr, Commissioner

**Appearances:** Ms Louise Hicks of Counsel on behalf of the Applicant (instructed by Bazzani Scully Priddle)

Mr Justin Ghattas as Counsel assisting the Commission

**Date of Hearing:** 27 April 2015

**Date of Decision:** 15 May 2015

**Date of Reasons:** 15 May 2015

**Decision:** The application be granted subject to the conditions as outlined at Paragraph 62.

**Signed:**

**Gail Owen**  
Deputy Chairman



## REASONS FOR DECISION

### INTRODUCTION

1. This is an application by Zagame's Berwick Springs 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 Berwick Springs Hotel, 288-296 Clyde Road, Berwick (**the Hotel**) from 85 to 95.
2. The relevant municipal authority is the Casey City Council (**Council**). As a result of undertaking its own assessment of the social and economic impact of the application, Council concluded that the proposal would have a neutral impact on the wellbeing of the municipality and, therefore, elected not to make any further submission to the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) and did not appear at the hearing.

### 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. 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.

### MATERIAL BEFORE THE COMMISSION

5. The Applicant provided the Commission with the following material in support of its application:
  - (a) a Social and Economic Impact Assessment, prepared by Colleen Peterson of Ratio Consultants Pty Ltd (**Ratio**), dated January 2015;
  - (b) an addendum to the original Social and Economic Impact Assessment, prepared by Ratio, dated April 2015;
  - (c) an Expenditure Report, prepared by Michael Clyne, Progressive Venue Services Pty Ltd (**PVS**), dated February 2015;
  - (d) Witness Statements dated February 2015, from –





- (i) Victor Bartholomew Zagame, Director of the Applicant;
  - (ii) Jackie Ann Margaret Booth, CEO of the Applicant;
  - (iii) Christakis Christou, Operations Manager of the Applicant; and
  - (iv) Leigh James Barrett, Director of Leigh Barrett and Associates Pty Ltd.
6. Additionally, the following material, prepared by Commission officers, was considered by the Commission:
- (a) a statistical report titled Economic and Social Impact Report, dated April 2015; and
  - (b) a compliance report titled Pre-Hearing Inspection and Compliance Report, dated April 2015.

#### **CITY OF CASEY AND THE BERWICK SPRINGS HOTEL**

7. The Hotel is located in the City of Casey (**Casey**), on the north-west corner of Clyde Road and Greaves Road in Berwick, approximately 1.5 kilometres south of the Princes Freeway.
8. The Applicant has undertaken some renovation works at the Hotel. Currently, the facilities at the Hotel include –
  - (a) sports bar with LCD screens, pool tables and TAB facilities;
  - (b) bistro with seating for 460 patrons;
  - (c) children's play area, which doubled in size following extension and refurbishment works;
  - (d) new bathroom facilities;
  - (e) new furniture throughout the gaming room, TAB, and outdoor areas;
  - (f) drive-through bottle shop; and
  - (g) gaming room with 85 EGMs.
9. Casey is a metropolitan Local Government Area (**LGA**) located approximately 70 kilometres south-east of Melbourne. Major centres include Narre Warren, Cranbourne and Berwick. Casey has an adult population of 207,789, which ranks Casey as the most populated of 31 metropolitan municipalities. The predicted annual rate of population growth of 2.8% between 2011 and 2016 higher than the Victorian average of 1.81%. Projections also indicate that by 2016, 27.2% of the population will be over the age of 50.
10. Casey is subject to a municipal limit of 1017 EGMs.<sup>1</sup> Currently, there are 13 gaming venues within the municipality with approvals to operate a total of 924 EGMs. Approval of this application would increase the number of EGMs within Casey to 934 and would not exceed the municipal limit.
11. Casey has an EGM density of 4.27 EGMs per 1,000 adults, which is 22.4% lower than the metropolitan average (5.51) and 26.6% lower than the State average (5.82). This gives Casey the ninth lowest EGM density of the 31 metropolitan municipalities.
12. Casey has an average gaming expenditure of \$545 per adult, which is 4.7% lower than the

<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.



metropolitan average (\$572) and 0.7% 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 0.1%, without allowance for population changes. Overall gaming expenditure within Casey has decreased by 11.25% in real terms (indexed to CPI) over the past five years, which is less than the metropolitan average of 12.77%.

13. Casey is characterised by a mixed socio-economic profile with indices both above and below metropolitan averages and is ranked 51<sup>st</sup> out of 79 LGAs in Victoria on the SEIFA scale of disadvantage,<sup>2</sup> indicating some disadvantage within the LGA.
14. In relation to the immediate surrounding area of the Hotel (i.e. within 2.5km), only 1.3% of SA1s are in the 1<sup>st</sup> quintile of SEIFA scores, with approximately 70% of SA1s being in the 4<sup>th</sup> or 5<sup>th</sup> quintile. This suggests that the area immediately surrounding the Hotel does not experience a significant level of disadvantage.
15. The unemployment rate in Casey is 7.34%, which is higher than the metropolitan unemployment rate of 6.68%. Unemployment in Casey has increased by 0.6% in the past 12 months.

#### APPLICANT'S WITNESSES AND SUBMISSIONS

##### *Mr Victor Bartholomew Zagame, Director of the Applicant*

16. Mr Zagame is the director of both the Applicant and the Zagame Group (**the Group**) and gave evidence at the hearing of the application. Mr Zagame has significant experience in the hospitality industry.
17. The Applicant is a wholly owned subsidiary of the Group. The Group owns and operates eight hospitality venues both domestically and internationally. The current business operations are focussed on delivering family-friendly venues that provide a varied offering to clientele.
18. Mr Zagame explained that the Group acquired the Hotel in 2013 due to its location in a growth corridor populated largely by families providing ample opportunity for a successful venture. The decision to rebrand the Hotel as a family-friendly venue also led to the closure of a nightclub formerly located within the Hotel.
19. Mr Zagame outlined the RSG compliance practices in place at the Hotel, with a particular focus on ensuring that all staff have both appropriate training and regular refresher courses. Mr Zagame also outlined the escalation process that is activated if an incident occurs at the Hotel, which involves notification to management of the incident and attendance at the venue when required.
20. The Group encourages its venues to use third-party consultants, such as Leigh Barrett and Associates, to ensure that staff training at those venues remains current and policies and procedures relating to

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<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.





service of liquor and gaming, are regularly reviewed. Mr Zagame also attends the venues, including the Hotel, on a regular basis to conduct broad whole-of-business assessments.

21. Mr Zagame indicated that if the application were successful, the Applicant will increase its cash contributions from the current \$60,000 per annum to \$75,000 while maintaining its in-kind contributions of approximately \$16,000 per annum. Mr Zagame outlined his preference to donate these funds to local charities that assist children and young people.
22. It was the evidence of Mr Zagame that increased patronage at the Hotel as a result of the renovation and refurbishment has led to an increased demand for gaming. As such, it is the view of Mr Zagame that granting the application is appropriate so as to allow for increased access to gaming and customer satisfaction, as well as the increase in community contributions.

***Ms Jackie Ann Margaret Booth, Chief Operating Officer of the Zagame Group***

23. Ms Booth is the Chief Operating Officer (COO) of the Group and gave evidence at the hearing.
24. Ms Booth described her duties as including broad financial and commercial responsibility for the venues operated by the Group, as well as assessing both staff and venue performance and delivering training to staff and management.
25. Ms Booth visits the Hotel on a regular basis to chair management meetings, conduct reviews of performance and ensure that the broad operation of the Hotel is satisfactory. Ms Booth also uses these visits to discuss any incidents that have occurred at the Hotel and measures that could be used to reduce the likelihood of a recurrence.
26. It is the view of Ms Booth that the level of training delivered to staff provides them with the necessary tools to make the customer experience memorable for all patrons who attend the Hotel, and not just those who choose to use the gaming room. Ongoing staff training is also crucial in identifying patrons exhibiting signs of problem gambling behaviour.
27. Ms Booth reiterated the position of the Group and confirmed that granting the application would allow the Applicant to make additional community contributions, increase the availability of gaming machines to patrons and improve the current facilities that exist at the Hotel.

***Mr Christakis Christou, Operations Manager of the Zagame Group***

28. Mr Christou is the Operations Manager of the Group and gave evidence at the hearing.
29. Mr Christou oversees the financial operation, compliance, employment and training at the Group's five Victorian venues. Mr Christou also acted as Project Manager during the redevelopment of the Hotel and has spent significant time at this particular venue.
30. Mr Christou described the process involved in improving the Hotel since the Group acquired it in 2013. In the course of undertaking due diligence of the Hotel, the Group discovered a leaky roof, broken fittings and fixtures, and a generally rundown venue. The Group invested approximately \$200,000



improving the Hotel cosmetically, retrained staff to raise the standard of customer service and rebranded the Hotel as a family-friendly venue. The rebranding has led to an uplift in both revenue and positive patron feedback.

31. In March 2014, the Group decided to undertake a three-stage renovation of the Hotel at a cost of approximately \$3.6 million. It is the evidence of Mr Christou that, as a result of these works, the Hotel is attracting a "good number of new faces". Given the increase in patronage at the Hotel, Mr Christou stated that it is appropriate for the Hotel to increase the number of EGMs available to provide a sufficient number for patrons utilizing EGMs during peak periods on Friday and Saturday evenings.
32. Mr Christou described the peak periods of EGM utilisation as occurring after the conclusion of bistro service on Thursday, Friday and Saturday evenings. Additional seating has been provided in the gaming room as there are significant numbers of patrons waiting to use EGMs, watching other patrons use EGMs or electing to share EGMs. The gaming room experiences about 20 hours per week of peak utilisation.
33. Mr Christou explained the RSG compliance measures that the Hotel undertakes with Leigh Barrett and Associates, as well as the implementation of an alert system in relation to regular staff refresher RSG training. Excepting one incident at the Caulfield Club Hotel, Mr Christou is not aware of any other compliance issues that have occurred at any venue operated by the Group. Mr Christou also gave evidence in relation to the close relations that both he and Ms Booth have with Gamblers Help Southern to monitor RSG issues and maintain a satisfactory level of training of staff.

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

34. Mr Michael Clyne gave evidence at the hearing of the application based on the outputs of the Geotech Model.
35. Mr Clyne gave evidence that:
  - an additional ten EGMs at the Hotel would result in increased expenditure of \$323,388 per annum;
  - approximately 66% of the increased expenditure would be transferred, mostly from other venues in the Hotel's local network; and
  - after taking into account new expenditure and expenditure transferred from gaming venues within Casey and neighbouring LGAs, gaming expenditure in Casey would rise by approximately 0.09%, or \$109,928, in the first 12 months of operation.
36. Mr Clyne stated that the instance of transferred expenditure predicted in this application may be slightly conservative and a higher rate might be experienced in the first twelve months of trade at the Hotel. In any event, Mr Clyne assessed the likely overall increase in new expenditure in Casey for year ending June 2014 as insignificant.





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

37. The Commission did not require Mr Barrett to give evidence at the hearing and relied on his witness statement.
38. Mr Barrett outlined the relationship between Leigh Barrett and Associates and the Group and some of the services provided, which include –
- (i) review and redevelopment of RSG and venue-wide Customer Care policies and procedures;
  - (ii) staff professional development sessions for all gaming and wagering staff on the expectations of the Group regarding responsible and customer care.
  - (iii) regular audits of compliance with regulatory and Responsible Gambling Code of Conduct requirements at each venue;
  - (iv) annual evaluation of Responsible Gambling code compliance at each venue; and
  - (v) ongoing support, upon request, in the development and implementation of other RSG/customer care initiatives.
39. Mr Barrett stated that he was first engaged to provide regulatory compliance services for other venues operated by the Group in 2011, and has visited the Hotel on numerous occasions since the Group assumed management in 2013.
40. Mr Barrett stated that the results of evaluations of staff at the Hotel have indicated “high awareness and commitment...to striving for ‘best practice’ in responsible gambling and customer care”, and he has “observed strong staff/customer interaction during my frequent visits to each of the Group’s hotels, including the Berwick Springs Hotel”.
41. Mr Barrett expressed the view that the Applicant is committed to ensuring the services offered by the Hotel are provided in a responsible manner with an emphasis on venue-wide customer care and the likely impact of the approval of the application on the level of problem gambling within Casey would be negligible.

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

42. Ms Peterson gave evidence that the profile of the local area in Casey indicates mixed SEIFA results. While the LGA of Casey is above the median score, SA1s located within the municipality rate both above and below the median score. This indicates that, whilst some disadvantage may exist, there are very few signs of significant disadvantage in the area immediately surrounding the Hotel.
43. Ms Peterson gave evidence that increased employment and community contributions that would result from the approval of the application were social benefits to Casey. Further, the opportunity for recreational gaming is a social benefit and, given the relative isolation of the Hotel, would result in greater opportunities for recreational gaming than is the case were there a large number of venues nearby. While recognising the disbenefits, being the potential for increased problem gambling and an



adverse impact on community health and connectedness, she considered them to be minimal disbenefits given the few signs of disadvantage in the community and the small increase in EGMs at the venue. Overall, Ms Peterson considered the social impacts would likely be slightly positive.

44. Ms Peterson considered that both the economic benefits and disbenefits were minimal, and that any increase in investment, additional employment, competition and complementary expenditure would be largely offset by the potential for an increase in problem gaming. Overall, Ms Peterson assessed the economic impacts as resulting in a slightly positive impact on Casey.
45. In assessing the results of her social and economic analysis, Ms Peterson concluded that the disbenefits of the application were outweighed by the benefits. As such, Ms Peterson considered the impact of the proposal to be slightly positive.

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

46. During the assessment of the proposal, Council was informed by the Applicant of its willingness to enter into an agreement to regulate the distribution of the community contributions "promised" by the Applicant. Council and the Applicant agreed to a set of conditions which was placed before the Commission for its consideration.

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

47. The Commission accepts that approval of this application is likely to result in an increase in gaming expenditure at the Hotel of approximately \$323,000 over the first 12 months, approximately two-thirds of which will be transferred from other gaming venues. The Commission finds that the portion of the new expenditure not attributed to problem gambling is an economic benefit.
48. The Commission considers that the proposed redevelopment of the Hotel will offer a marginal economic benefit to the community, but will largely occur regardless of this application. The Commission finds that the construction costs directly attributable to this application is limited, and as such, can only carry limited weight as a benefit.
49. 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, and greater available number, of EGMs. The Commission considers this to be a slight social benefit.
50. Employment impacts are traditionally viewed (e.g. by the Productivity Commission) as transfers. 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.
51. The Commission does not consider the reduction of debt to be an economic benefit or disbenefit to the community. The Commission has not considered previous renovations or improvements to the Hotel as they are not relevant to the determination of this application.
52. Overall, the Commission considers there would be a small positive economic impact on the Casey





community were the application approved.

#### LIKELY SOCIAL IMPACT OF APPROVAL

53. 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 and increased health and social service requirements. Accordingly, the Commission accepts there is potential for negative social costs through possible increased problem gambling expenditure.
54. In relation to the vulnerability of the municipality, the Commission accepts the evidence of Ms Peterson and Mr Clyne that the new gaming expenditure is likely to have a negligible impact on the social fabric and economic resilience of the Casey community.
55. Overall, taking into account the EGM density and EGM expenditure per adult together with the socio-economic profile of the municipality, the Commission finds that Casey does not present as particularly vulnerable to problem gambling, does not appear to have an excessive number of gaming machines or that Casey residents spend an excessive amount on gaming.
56. 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 in both the Hotel and Casey. The risk is further reduced as the Applicant is an experienced venue operator with appropriate knowledge of harm minimisation and RSG strategies. The Applicant has adopted best practice and introduced a number of protective factors to minimise the impact of problem gambling at the Hotel.
57. In conclusion, the Commission is satisfied that the potential for an increase in problem gambling is low.
58. In relation to proposed community contributions, the Commission considers the level of community contributions and the impact on local community organisations to be a marginal social benefit. The Commission accepts that community contributions of \$15,000 per annum in addition to current contributions are an economic benefit to the community.
59. 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

60. Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be slightly positive.<sup>3</sup>
61. The Commission considers the Applicant to be an appropriate and competent operator, offering a wide variety of services and facilities at the Hotel.
62. After consideration of the material before it, the Commission is satisfied that it should exercise its

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



discretion to approve the application, subject to the following conditions (which are substantially in the form agreed by the Applicant and Council) –

***Community contributions***

- (a) *The Venue Operator undertakes to:*
  - (i) *establish the Berwick Springs Hotel Community Fund (the Fund);*
  - (ii) *make the cash contributions referred to in Condition 1(b)(iii) to the Fund for so long as any of the ten (10) additional electronic gaming machines operate at the Hotel (up to 15 August 2022);*
  - (iii) *the annual cash contribution will be \$15,000 (indexed each year by CPI, all groups Melbourne) (the Contribution);*
  - (iv) *the Contribution will be allocated each year to not-for-profit community groups and sporting organisations providing services and facilities to residents in the City of Casey.*
- (b) *The distribution of the Contribution will be determined by a committee (the Committee) established by the Venue Operator comprising:*
  - (i) *two representatives nominated the Venue Operator; and*
  - (ii) *one representative nominated Council or, if Council fails to nominate a representative, a community representative nominated by the Venue Operator.*
- (c) *The Committee will advertise annually in a newspaper circulating in the City of Casey for submissions for funding from not-for-profit community and sporting organisations providing services and facilities to residents of the City of Casey. The Committee will assess requests for funding in accordance with guidelines to be established by the Committee.*
- (d) *The Venue Operator will continue to pay a further \$60,000 per annum by way of cash contributions to community organisations while any of the ten (10) additional electronic gaming machines operate at the Hotel (up to 15 August 2022).*

***The preceding paragraphs are a true copy of the Reasons for Decision of Miss Gail Owen, Deputy Chairman, and Mr Robert Kerr, Commissioner.***