



# 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 The Cranbourne Hotel Pty Ltd for amendment of its venue operator's licence to vary the number of gaming machines at the approved venue, Craig's Royal Hotel, 10 Lydiard Street South, Ballarat from thirty-seven (37) to forty-five (45) gaming machines.

**Commission:**

Miss Gail Owen, Acting Chairman  
Mr Des Powell, Acting Deputy Chairman

**Appearances:**

Ms Louise Hicks of Counsel  
(instructed by Williams Winter Solicitors)

Mr Bronte Campbell as Counsel Assisting the Commission

**Date of Hearing:**

11 February 2013

**Date of Decision:**

25 March 2013

**Decision:**

That the application be granted.

**Signed:**

A handwritten signature in blue ink, appearing to be 'G Owen'.

**Miss Gail Owen**  
Acting 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 Craig's Royal Hotel, 10 Lydiard Street South, Ballarat (the **Hotel**), from 37 to 45 EGMs.
2. The relevant municipal authority is the City of Ballarat Council (the **Council**). On 31 January 2013, the Council wrote to the Commission stating that the Council did not oppose the application as the location of the Hotel was "consistent with the City of Ballarat Gaming Machine Community Policy which identified the Central Business District as a more desirable location for gaming machines". The Council did not provide the Commission with a written submission and was not represented at the hearing of the application.

### THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (the **Act**). The Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and some members of some communities.<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 harm for others. In particular, the balance is maintained by requiring an applicant who wishes to increase the number of EGMs at a venue to satisfy the Commission of the "no net detriment test", and the other matters set out in section 3.4.20(1) of the Act.<sup>2</sup>
4. The no net detriment test requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.<sup>3</sup>

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

<sup>2</sup> See: *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [247] (Bell J).

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



## THE CITY OF BALLARAT AND CRAIGS ROYAL HOTEL

5. The Hotel is within the City of Ballarat (**Ballarat**), a regional Local Government Area located approximately 110 kilometres west of Melbourne. Ballarat comprises four statistical local areas<sup>4</sup> (**SLAs**), Ballarat – North, Ballarat – Inner North, Ballarat – Central and Ballarat – South. The Hotel is located in the Ballarat – Central SLA, in the Ballarat central business district.
6. Ballarat is subject to a regional cap of 663 EGMs<sup>5</sup>. Currently, there are 623 EGMs operating across 14 approved venues. In terms of gaming density, Ballarat has 8.15 EGMs per 1,000 adults which is 9% more than the regional average and 41% more than the State average of 5.77. Approval of this application would result in an increase in EGM density of 1.35%.
7. Ballarat has an average gaming expenditure per adult of \$732 which is 17% more than the regional average and 22% more than the State average. The Commission notes that gaming expenditure within Ballarat has decreased by 17.8% in real terms (indexed to CPI) over the past 5 years.
8. The Ballarat – Central SLA is ranked 27<sup>th</sup> out of the 41 regional SLAs in Victoria on the SEIFA Index for Disadvantage<sup>6</sup>, which suggests that there is a moderate level of disadvantage within the SLA when compared with other regional municipalities. When broken down into a Census Collection District (**CCD**) level, 26% of CCDs within a 2.5km radius of the Hotel are in the first quintile of disadvantage and 45% are in the second quintile of disadvantage which indicates that the Hotel is situated in an area of considerable disadvantage. The Commission also notes that there are 7 other gaming venues within a 2.5km radius of the Hotel operating a total of 351 EGMs.

## THE MATERIAL BEFORE THE COMMISSION

9. 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.

<sup>4</sup> An SLA is a general purpose spatial unit. It is the base spatial unit used to collect and disseminate statistics by the Australian Bureau of Statistics.

<sup>5</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>6</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.



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

10. NBA Group Pty Ltd prepared a social and economic impact report in support of application. Mr Nicholas Anderson, Managing Director, gave evidence at the hearing.
11. Mr Anderson told the Commission that Ballarat exhibits the typical characteristics of a regional centre with a strong tourist trade and a broad range of social and economic disadvantage. Mr Anderson noted that Ballarat is a university city and statistical indicators of disadvantage such as low income and unemployment are likely to be skewed because of the high proportion of tertiary students.
12. Mr Anderson drew the Commission's attention to the high density of EGMs in Ballarat. Mr Anderson said that it was important to note that while the EGM density in Ballarat is above average, the number of EGMs operating in the municipality is well below the regional cap. Further, Mr Anderson told the Commission that the high density of EGMs in Ballarat should be viewed in conjunction with Ballarat's significant tourism industry as the gaming machines service a market much greater than the local population of Ballarat.
13. Mr Anderson noted that there were 4 gaming venues within close proximity to the Hotel operating a total of 156 EGMs. Mr Anderson told the Commission that, in comparison to the neighbouring gaming venues, the Hotel was situated in an area that is furthest away from the most disadvantaged areas of the municipality.
14. Mr Anderson noted that the Hotel's location and nature is consistent with the City of Ballarat Council's policy with respect to gaming venues. The Hotel is located on the periphery of Ballarat's CBD and outside Ballarat's core retail corridor. As such, it does not see large amounts of pedestrian traffic. Further, the Hotel promotes social, entertainment and recreational activities other than gaming which is encouraged by Council's policy.
15. According to Mr Anderson, the Hotel has a strong community involvement and focuses on providing community groups in Ballarat with a place to meet and hold functions as well as promoting Ballarat as a tourist destination generally. The Hotel provides cash and in-kind donations to community groups. The in-kind donations take the form of meal and drink



vouchers, accommodation vouchers and the complimentary use of function facilities. The Hotel also promotes local produce through its gift shop and restaurant.

16. Mr Anderson told the Commission that patron surveys showed:

- 90% of accommodation patrons were from outside of the municipality;
- 46% of bistro patrons were from outside of the municipality; and
- 54% of patrons in the gaming room were from outside of the municipality.

Mr Anderson told the Commission that these figures showed that a significant portion of the Hotel's revenue is drawn from outside the municipality and retained in Ballarat, resulting in a positive economic stimulus for the region.

17. In Mr Anderson's opinion, the key social and economic benefits of this application would be drawn from an increase in gaming revenue for the Hotel which will allow its operators to:

- increase the in-kind and cash donations that the Hotel provides to the community;
- further renovate the venue including refurbishing the Hotel's façade and constructing a multi-level carpark; and
- continue to maintain the heritage listed venue.

18. Mr Anderson also told the Commission that an EGM utilisation survey was conducted at the Hotel over a two week period. The results of the survey showed that EGM usage was in excess of 70% for 7 hours per week. Usage in excess of 70% is considered to be peak usage and indicates a demand for additional EGMs. In Mr Anderson's opinion, increasing the number of EGMs at the venue would provide a further benefit by improving choice and availability in peak periods.

19. In terms of disbenefits, Mr Anderson noted that increasing the number of EGMs brought with it a risk of an increase in the incidence of problem gambling. However, in Mr Anderson's opinion, approval of this application is unlikely to increase the rate of problem gambling within Ballarat as:

- there is already a large number of EGMs in the area surrounding the Hotel and accessibility to EGMs will not be increased by any significant margin;
- gaming is one component of a larger entertainment offered at the Hotel;
- the anticipated increase in EGM expenditure within the municipality is modest and unlikely to have a material impact on expenditure derived from problem gambling; and



- the venue operator takes its responsible service of gaming obligations seriously and is committed to minimising harm associated with problem gambling in its venue.

20. Having considered the economic and social impacts of the application, Mr Anderson concluded that approval of the application would not result in a social or economic detriment to the local community. Further, Mr Anderson noted that an increase in EGMs would better position the Hotel to service an increase in tourist trade and growth in the local population.

***Evidence of likely EGM expenditure***

21. The Applicant engaged Mr Michael Clyne to provide an estimate of the expenditure that would be generated by an additional 8 EGMs at the venue. Mr Clyne is an independent gaming expenditure expert who has appeared before the Commission to give evidence on many occasions.
22. 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 in the venue would generate additional annual revenue of \$140,172.
23. Mr Clyne estimated that 80% of the additional expenditure would be transferred from other gaming venues within the municipality. Accordingly, should this application be approved, there would be a net increase in EGM expenditure within the municipality of \$28,034 in the first twelve months of trade (which is a net increase of 0.05%).
24. The Commission and the Victorian Civil and Administrative Tribunal have, in recent times, been critical of transferred expenditure estimates and their lack of rigour and analytical basis. Mr Clyne's transferred expenditure estimate is not founded on an analytical assessment but is based on his experience in the gaming industry and a consideration of other gaming venues within the municipality, their EGM offering and their yearly revenues.
25. Acknowledging this criticism, Mr Clyne provided the Commission with examples of venues with similar attributes to the Hotel to assist the Commission in its consideration of transferred expenditure. The case studies detailed five gaming venues which have recently been successful in applications to the Commission to increase the number of EGMs permitted to



operate at the venue. As part of those applications, expenditure estimates were provided using the Geotech model<sup>7</sup>. The case studies showed transferred expenditure estimates for those five venues ranged between 72% and 92%.

26. Mr Clyne told the Commission that it could seek could seek comfort from the case studies because they showed that his prediction was within the range predicted by the Geotech model in similar applications. The Commission cannot accept this proposition. While the examples proffered by Mr Clyne may be broadly similar to this application, each gaming venue, municipality and application is unique and will have different factors that impact on the amount of gaming revenue that will be transferred from other venues. Further, there is no evidence before the Commission that the estimates proved to be correct. While the Commission acknowledges the difficulty in predicting, and ascertaining the correctness of predictions, of estimates of transferred expenditure, because of their subjective basis, the Commission can place little weight on them.
27. Nevertheless, the Commission accepts that, in this case, there is likely to be considerable expenditure transferred from other venues due to the high density of gaming machines in the municipality and, particularly, the area surrounding the venue. In this case, the Commission is prepared to adopt a transfer range of between 50% - 80%.
28. The Commission considers that Mr Clyne's method of estimating the expenditure derived from the additional 8 EGMs, while it cannot be precise, is reasonable. Accordingly, based on Mr Clyne's overall assessment of additional expenditure, it can be expected that, if this application is approved, the municipality would see a net increase in EGM expenditure of between \$28,000 and \$70,000 in the first twelve months of trade.

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

29. Mr John Finning and his wife are the owners of the Hotel (which they purchased in 1999) and directors of the Applicant. Mr Finning provided a witness statement and gave evidence at the hearing of the application.

<sup>7</sup>

The Geotech model is a retail gravity geo-spatial model which has been considered and accepted in previous applications before the Commission.





30. Mr Finning told the Commission that the Hotel has been in operation since 1853 and has been operated by the Applicant since 1999. Since Mr Finning and his wife purchased the Hotel, approximately \$9 million has been spent restoring it to its former glory as a gold-rush era hotel. The Hotel now sits as a boutique heritage venue that has been finished to an exceptional standard.
31. The Hotel offers 41 renovated accommodation rooms, an 80 seat bistro situated in a glass roof courtyard, a café and larder, a front bar known as 'Craig's Bar', five function rooms and a gaming room with 37 EGMs. Mr Finning told the Commission that the Hotel plays a significant role in the community being an historic icon, entertainment facility and meeting place for the residents of Ballarat.
32. While the majority of renovation work has been completed, Mr Finning told the Commission that the façade of the Hotel still needed restoration. Mr Finning estimated that the restoration of the façade would cost approximately \$500,000. Additionally, Mr Finning told the Commission that he planned to construct a multi-story car park at the rear of the Hotel, to be used by accommodation guests, at a cost of approximately \$1.5 million.
33. In Mr Finning's opinion the Hotel is a major drawcard to the Ballarat region and promotes tourism within the region. Mr Finning told the Commission that in the past year, the Applicant had spent \$150,000 on marketing and advertising to promote the Hotel and the City of Ballarat. Mr Finning estimated that two thirds of this expenditure was spent outside of Ballarat, in national and international markets.
34. In terms of the support the Hotel provides to the community, Mr Finning told the Commission that in the last 12 months, the Applicant had provided approximately \$50,000 in in-kind and cash donations to community groups. Mr Finning told the Commission that the Hotel rarely turns down requests for sponsorship or assistance from community groups within Ballarat and will continue to have this attitude into the future. Most of this sponsorship is done through the provision of meal or accommodation vouchers, free use of the venue and holding charity events.
35. Mr Finning said the revenue to be derived from the additional EGMs would be used to fund the restoration of the façade, construction of the car park and on-going maintenance works. Mr Finning told the Commission that he also intended to increase contributions made to the community but was unable to specify the amount of this increase.





36. When questioned by the Commission whether the further renovation and on-going maintenance works would not take place if this application were granted, Mr Finning told the Commission that the works would still go ahead but the refurbishment of the façade and construction of the car park would be undertaken much sooner if the application were approved.

#### LIKELY ECONOMIC IMPACT OF APPROVAL

37. While there is frequently a large degree of overlap between economic and social impacts of applications to operate EGMs, the Commission considers it useful to identify and analyse economic and social impacts separately to arrive at a net position for each before undertaking the final analysis.<sup>8</sup>
38. The Commission accepts that approval of this application will result in an increase in gaming expenditure at the Hotel of approximately \$140,000. The Commission considers it likely that a substantial portion of this expenditure will be transferred from other venues. However, the Commission is unable to quantify, with any certainty, the revenue that would be drawn from those other venues. The Commission considers it appropriate to apply a transfer range of between 50% and 80% resulting in an increase in revenue within the municipality of between \$28,000 and \$70,000.
39. The Commission considers there to be a marginal economic benefit associated with this application through an increase in gaming expenditure within the municipality. The Commission accepts that gaming expenditure, not associated with problem gambling, as legitimate consumption expenditure undertaken by and large by people enjoying a recreational activity. However, revenue derived from problem gamblers, is a disbenefit as it leads to economic costs such as lost productivity, increased health and social service requirements and other social costs.
40. Overall, the Commission accepts that there is a small potential for some economic downsides of the application through possible increased problem gambling expenditure. This is mitigated by the policies and processes the Applicant has in place to identify and assist problem gamblers. The Commission is also of the view that any increase in problem gambling as a result of this application will be offset by the economic stimulus an increase in gaming revenue

<sup>8</sup> This is consistent with the approach taken by Justice Bell in *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275.



will bring to the municipality. Accordingly, the Commission considers that there will be a neutral economic impact on the community if the application were to be approved.

#### LIKELY SOCIAL IMPACT OF APPROVAL

41. The risk of an increase in problem gambling is also a social disbenefit. The Commission is satisfied that, with this application, the potential for an increase in problem gambling is minimal due to the small increase in the number of EGMs and the ready access to EGMs within close proximity to the Hotel.
42. The Commission considers increasing the number of EGMs at the venue would provide a moderate social benefit by improving choice and availability of machines in peak periods for those who partake in gaming as a legitimate recreational activity.
43. The Commission considers that the likely social impact of the proposal will be neutral.

#### CONCLUSION

44. The no net detriment test in section 3.4.20(1)(c) of the Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts. The test will be satisfied if, following the weighing of any likely impacts, the Commission is satisfied that the net economic and social impacts of approval on the well-being of the relevant community will be either neutral or positive.<sup>9</sup>
45. The reality of this application is that there are very few benefits that are directly related to the application. The Commission acknowledges the considerable time and expense that has been spent in transforming the Hotel into its current prestigious state and the benefits the Hotel provides to tourism in Ballarat. However, those benefits are already in place and will not be derived from the additional 8 gaming machines to be installed in the Hotel.
46. Similarly, the Commission cannot consider matters that will take place regardless of the success of this application or aspirational proposals that lack certainty to be benefits associated with the application. Accordingly, the Commission cannot place weight on the benefits that would be associated with the further improvements to the Hotel or the aspiration to increase community contributions.

<sup>9</sup>

*Romsey* (2008) 19 VR 422, 435.



47. The Commission is not satisfied that the introduction of an additional 8 EGMs into a municipality that is already dense with EGMs will increase the prevalence of problem gambling in the community.
48. After consideration of the material put before it, the Commission is satisfied that the approval of this application will not result in a net economic and social detriment to the community of Ballarat.
49. On the material that has been put before it, the Commission is satisfied of the other matters in section 3.4.20(1). The Commission is also satisfied that the Applicant understands and will continue to act on its obligations to take measures to prevent problem gambling. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the application.

**The preceding [49] paragraphs are a true copy of the Reasons for Decision herein of –**

**Miss Gail Owen, Acting Chairman**

**Mr Des Powell, Acting Deputy Chairman**