



Victorian Commission for Gambling and Liquor Regulation

DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003*, by Rumotel Pty Ltd for amendment of its venue operator's licence to vary the number of electronic gaming machines at the approved venue, The Tower Hotel, 686 Burwood Road, Hawthorn East, from twenty-five (25) to thirty-three (33) electronic gaming machines.

Commission:

Mr Bruce Thompson, Chairman
Mr Ross Kennedy, Deputy Chairman

Appearances:

Mr Nicholas Tweedie on behalf of the Applicant
Ms Anna Clarke as Counsel assisting the Commission

Date of Hearing:

27 August 2013

Date of Decision:

4 October 2013

That the application be granted.

Signed:

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

Bruce Thompson
Chairman



REASONS FOR DECISION

INTRODUCTION

1. This is an application by Rumotel Pty Ltd (**the Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at The Tower Hotel, 686 Burwood Road, Hawthorn East (**the Premises**), from 25 to 33 EGMs.
2. The relevant municipal authority is the Boroondara City Council (**the Council**). The Council opposed the application but did not appear at the hearing of the application.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (**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.¹ 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.²

¹ See: s 1.1(2) of the Act.

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



THE CITY OF BOROONDARA AND THE TOWER HOTEL

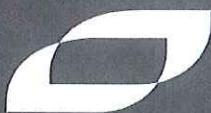
6. The City of Boroondara (**Boroondara**) is a Metropolitan Local Government Area (**LGA**) located approximately eight kilometres east of Melbourne and includes the major suburbs of Camberwell, Hawthorn and Kew. Boroondara consists of four statistical local areas³ (**SLAs**), Boroondara – Kew, Boroondara – Hawthorn, Boroondara – Camberwell South and Boroondara – Camberwell North. The premises are located within Boroondara - Hawthorn SLA.
7. The municipality of Boroondara is subject to a municipal cap of 1,295 EGMs.⁴ Currently there are five gaming venues within Boroondara operating 197 EGMs. Approval of this application will take the number of EGMs operating in the municipality up to 205.
8. In terms of the social and economic profile of Boroondara, the LGA is characterised by low levels of disadvantage. In summary:
 - Boroondara has a low level of EGM density (1.44 EGMs per 1,000 adults) and a low level of gaming expenditure on a per adult per annum basis (\$140). This represents an EGM density and gaming expenditure which are both 75% lower than the State average.
 - Gaming expenditure within Boroondara has decreased by 13.7% in real terms (indexed to CPI) over the past five years. This is slightly below the metropolitan average which experienced a 16.7% reduction in real terms over the past 5 years.
 - Based on 2011 census data, Boroondara - Hawthorn SLA is ranked 11th out of the 79 Victorian SLAs on the SEIFA scale of disadvantage⁵, which suggests that there is a low level of disadvantage when compared with other LGA's.
9. The Commission notes that a significant portion (80%) of the venue's catchment area⁶ (within 2.5km radius of the Premises) sits within the fifth quintile of disadvantage (in a SEIFA basis). This suggests that the area surrounding the Premises experiences little to no disadvantage.

³ 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.

⁴ 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 municipal district.

⁵ 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.

⁶ Where patrons of the Premises are most likely to be drawn from.

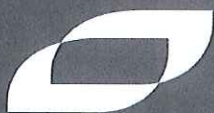


THE MATERIAL BEFORE THE COMMISSION

10. 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

11. The Applicant engaged Ratio Consultants Pty Ltd to prepare a social and economic impact statement to accompany the application. Ms Hayley McFadden, Social Geographer at Ratio Consultants Pty Ltd gave evidence at the hearing of the application. In addition to the social and economic impact statement, Ms McFadden prepared an addendum report containing responses to the Council's submission.
12. Ms McFadden provided a statement outlining the location of the Premises and its surrounds. The venue is located on the south - east corner of the Burwood Road and Camberwell Road intersection. The Premises is also on the eastern edge of the Burwood Road enterprise corridor, which is a significant source of business and employment opportunities in the LGA.
13. The Premises is comprised of a sports bar, bistro with seating for up to 150 patrons, upstairs function room which can cater for up to 150 seated patrons, gaming room with 25 gaming machines, 13 accommodation rooms and a drive through bottle shop. The Premises are currently undergoing renovations to the bistro, kitchen, toilets and bar at an approximate cost of \$300,000 to \$400,000.
14. In her statement, Ms McFadden provided the following overview of the likely economic and social impacts of the application:
 - The applicant will make a cash contribution of \$16,000 into a community fund should this application be granted. It is proposed that this contribution will be paid to the fund annually and distributed via a panel consisting of a representative of the Applicant, the Council and a local community member.
 - An increase in gaming expenditure of approximately \$109,704 per annum to the City of Boroondara will provide a minor stimulus to the economy and benefit those who choose to participate in gambling.
 - There will be an increase in access to gaming for those who choose to participate without harming themselves or others, and a slight increase in consumer choice in relation to the availability of games at the venue.



- There is a possibility of an increased incidence of problem gambling, and an increased risk of expenditure by problem gamblers.
15. Ms McFadden told the Commission that the Council's submission was flawed as it relied on the SEIFA Index for Economic Resource.⁷ This Index is not recommended by the ABS to be used in assessing socio - economic disadvantage. In Ms McFadden's opinion the SEIFA Index for Disadvantage is a more appropriate measure and one that has been consistently relied on by the Commission and VCAT.
 16. Finally, Ms McFadden told the Commission that the LGA displays very low levels of disadvantage compared to all other LGAs in the State. She concluded that the community is not one that she would consider as suffering from any social isolation and noted that unemployment levels within the SLA are well below the state average.

Evidence of likely EGM expenditure

17. The Applicant engaged Moore Stephens, Accountant & Advisors, to provide an estimate of the expenditure that would be generated by an additional eight EGMs at the Premises. Mr Stillwell appeared before the Commission at the inquiry.
18. Mr Stillwell told the Commission that in his view, proximity is one of the key determinants in relation to the distribution of gaming revenue between venues. In this application, there are two venues within immediate proximity (being within two kilometres), and a further two premises (being within five kilometres) that will have a marginal contribution in terms of transferred expenditure to the Premises.
19. Further, Mr Stillwell told the Commission that his prediction was based on 2012 expenditure data. While he acknowledged the 2013 data was available, he noted that there was an overall decline in gaming revenue in the State. He stated that therefore, to err on the side of caution, it is appropriate to use 2012 data which is likely to provide a more robust and optimistic view of the revenue that could be achieved.
20. Mr Stillwell calculated the range of potential incremental revenue the additional EGMs would generate based on an analysis of the current machine utilisation together with the net machine revenue per day (NMR) of \$289 yielded by the current fleet of 25 EGMs.
21. He concluded, based on his analysis of a machine utilisation survey, that the new EGMs would contribute marginal revenue of 12.5% of the current NMR (ie. 12.5% of \$289) at the

⁷ The SEIFA Index for Economic Resource excludes education and occupation variables because they are not direct measures of economic resource.



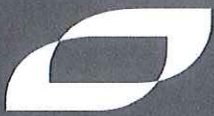
low end to 20% of the current NMR (ie. 20% of \$289) at the high end of the range.

Marginal revenue of the new EGMs would therefore be between \$105,500 and \$168,776.

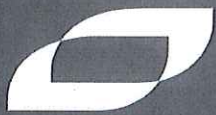
22. Mr Stillwell suggested that based on venue benchmarking, historical EGM performance and usage and capacity analysis, the new fleet of 33 EGMs would most likely achieve an average NMR performance of between \$200 and \$250. In the Commission's view, Mr Stillwell has adopted a reasonable approach in attempting to predict future EGM revenue performance at the Premises.
23. Mr Stillwell concluded also that based on his analysis of competing venues in the vicinity and assumptions about relative venue capacities together with proximity considerations between the competing venues, "new" expenditure to the LGA as a result of this application would be between \$63,300 and \$109,704.
24. Finally, Mr Stillwell told the Commission that the amount of gaming expenditure per adult per annum in the SLA will increase to \$149, with a density of 1.51 EGMs per 1000 adults. Mr Stillwell noted that the expenditure per adult will remain very low compared with the metropolitan and state average of \$638 and \$602 respectively.

The Hotel

25. Mr Joe Rumoro, the Sole Director of the Applicant, provided a statement and appeared before the Commission to give evidence.
26. Mr Rumoro told the Commission that the Applicant's portfolio comprised of the Premises, the Epping Hotel and a business in liquor wholesale importation of exotic beers, champagnes and whiskeys. Mr Rumoro stated that the venue in its current form does not have capacity for more than 33 EGMs.
27. Further Mr Rumoro confirmed that if this application was successful the applicant would increase its donations to the community by the sum of \$16,000 per annum for the lifetime of the additional entitlements. He stated he intended to establish a committee with the Council and community representatives to make recommendations as to how those contributions are allocated.
28. The Applicant provided a statement from Mr David McNally, the Venue Manager of the Premises. Mr McNally gave evidence to the Commission regarding the responsible gaming practices of the Premises.



29. Mr McNally told that Commission that he was responsible for the day-to-day operation of the business, including the venue's compliance with the implementation of responsible gaming practices.
30. With respect to responsible service of gaming, Mr McNally 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 McNally told the Commission that a representative from Gamblers Help Northern has attended the venue on a weekly basis and has bi-monthly meetings with management staff to discuss problem gambling strategies.
31. In relation to the suggestions by the Council that there had been no contact with Gamblers Help Eastern prior to July 2013, Mr McNally asserted that the Premises had been in contact with Gamblers Help Northern since his commencement at the business in 2012. Given the venue's connection to the Epping Hotel, it was thought appropriate to continue the relationship with Gamblers Help Northern. Therefore, the staff at the Premises have attended training, and engaged with Gamblers Help Northern prior to July 2013, however Mr McNally confirmed the staff had met with Mr Nick Lawley from Gamblers Help Eastern and have recently commenced a formal training program with them.
32. Finally, Mr McNally does not believe there to be any problem gambling concerns associated with the Premises and is confident that an additional eight EGMs would not encourage problem gambling within the venue.
33. Mr Jonathon Andrew Halliday was called on behalf of the Applicant to give further evidence regarding the Applicants relationship with Gamblers Help Eastern. Mr Halliday is the general Manager of the Rumotel Group and his role is predominantly to oversee the Epping Hotel. He has weekly interaction with this venue.
34. Mr Halliday told the Commission that he had established a relationship with Mr Stuart Barton, Senior Manager of the Gamblers Help Northern. Given that the Epping Hotel was the larger of the two venues, it was decided to combine the training with the entire management team across the two venues.
35. Mr Halliday confirmed that Mr Nick Lawley from Gamblers Help Eastern has had a regular presence at the Premises. Finally Mr Halliday refuted that the Applicant had 'shown a lack of integrity over a number years' as suggested by Ms Jackie Bramwell from Gamblers Help Eastern, and stated that he had never had any contact with Ms Bramwell.

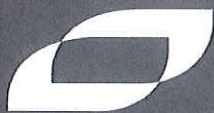


THE COUNCIL'S SUBMISSION

36. In opposition to the application, the Council filed a Social Impact Assessment Report. The Council did not appear at the hearing of this matter.
37. The Council's report stated that the City of Boroondara was shown to be relatively advantaged when compared to Greater Melbourne Municipalities in regards to income, education, home ownership and occupation. However, the Council report stated that there were pockets of disadvantage based on the SEIFA Index of Economic Resources.
38. Further, the report stated that there was a concentration of Department of Human Services or community housing dwellings in the area surrounding the premises. While the Council stated that 41% of the Boroondara's known rooming houses and 40% of Boroondara's known rooming house beds are located in the venue catchment area, no further details were provided as to where these are located or whether there are any people at a higher risk of developing gambling problems.
39. The Council submitted that given the small amount of increased revenue derived from the application, they believed the benefits of the application were marginal. Further, they submitted in their report that the negative impacts associated with the application were apparent given the profile of the local community, and that 'the area surrounding the venue is distinctly disadvantaged according to the social determinants of health when compared to the rest of the municipality'.
40. In summary, the Council believed that based on these pockets of disadvantage, the negative impacts associated with the applicant are apparent, and therefore the application should be refused.

Submission from ESCH

41. Each Social and Community Health (**ESCH**) made a written submission to the Commission in opposition to the application for an increase of EGMs at the Premises. Gambler's Help Eastern is one of the main services offered by ESCH.
42. ESCH opposed the application on the basis that the proposal increased profits for the premises without attempting to reduce the risk of an increase in problem gambling.
43. ESCH contends that the proposed increase will have a negative social and economic impact on the community by virtue of the lack of planned improvements or alternate entertainment absent from the proposal by the Applicant. Further, the proposed increase is seen by ESCH to be unlikely to create any additional employment or community benefit,



and both the recipients and amount of any community contribution from the Premises is unknown.

44. ESCH submitted that they were greatly concerned by the lack of integrity shown by the Hotel. ESCH states that the Premises are one of the few venues that have not fully utilised the free training that is offered. Until July 2013, ESCH contends that the Premises had refused training up until the time at which the current Application was made to the Commission. On this basis, ESCH are of the view that the Premises are primarily concerned with increasing profits without having regard for the potential to increase problem gambling in the community.

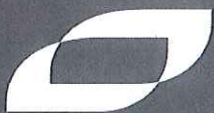
FINDING BY THE COMMISSION

45. 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.⁸

LIKELY ECONOMIC IMPACT OF APPROVAL

46. The Commission considers that regardless of what analytic tools are employed, a large element of judgement is necessary in forecasting. The Commission accepts that approval of this application will result in an increase in gaming expenditure at the Premises of approximately \$105,500 to \$168,776 over the first 12 months.
47. 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). While the Commission accepts that no model can incorporate the many real life variables that influence expenditure trends, the Commission considers Mr Stillwell's estimated transfer percentage of 45% to 50% to be not unreasonable having regard to the maturity of the Boroondara gaming market and a low level of EGM density in Boroondara. The Commission considers it is likely that approval of this application will result in an increase in the new net gaming expenditure in the LGA of somewhere in the range of \$63,300 - \$109,704.
48. The Commission considers there to be a marginal economic benefit associated with this application through an increase in gaming expenditure within the municipality. The

⁸This is consistent with the approach undertaken by Justice Bell in *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275



Commission considers gaming expenditure (excepting that associated with problem gambling) to be legitimate consumption expenditure undertaken by 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.⁹

49. 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

50. 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.
51. While the Commission accepts that a potential increase in EGM expenditure within a community brings with it an inherent risk of an increase in problem gambling, the Commission considers that, given approval of this application will result in the operation of an additional 8 EGMS, the modest increase in expenditure is unlikely to lead to a rise in problem gambling within the City of Boroondara. The Commission acknowledges this potential risk however it is likely to be of small or no significance due to the demographic profile of the area surrounding the venue showing very low levels of disadvantage.
52. The Commission also considers that the measures that the Applicant has in place to identify and assist problem gamblers will further mitigate the risk of problem gambling. Further, the Commission considers that approval of this application will not increase the availability of EGMs in the community to any significant degree. 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 eight EGMs will materially change the operation and responsible service of gaming performance of the venue.
53. The Commission considers the venue to have appropriate responsible service of gaming policies that mitigate against the incidence of problem gambling. While the Commission notes the material submitted by ESCH regarding the lack of integrity shown by the applicant and its refusal of training, the Commission was unable to test this evidence at the inquiry. The Commission also heard evidence from Mr McNally and Mr Halliday

⁹ Australian Government Productivity Commission, "Productivity Commission Inquiry Report: Gambling", Volume 1, No. 50, 26 February 2010.



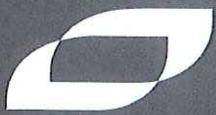
regarding the regular contact with Mr Stuart Barton and the training provided by Gamblers Help Northern; and further, the contact Mr Halliday had with a Mr Nick Lawler from Gamblers Help Eastern. The Commission concludes that the Applicant has been provided with support and training from Gamblers Help Northern, and that it appears to the Commission there may potentially have been some miscommunication between the representatives from Gamblers Help Eastern.

54. The Commission accepts that the Applicant's commitment to increase its community cash contributions by \$16,000 arising from the grant of this application is a positive social benefit.
55. The Commission accepts that it must give substantial weight to the views of the community, whatever might be the basis for those views.¹⁰ However the Commission notes that the Council has submitted a report which was unable to be questioned or challenged.
56. The Commission notes the submission by the Council that the SEIFA Index for Economic Resource shows some pockets of disadvantage in the municipality. However the Council agreed in its submission that the municipality is shown to be relatively advantaged when compared with Greater Melbourne. Further, the Commission accepts Ms McFadden's submission that the SEIFA Index for Disadvantage is the most appropriate index to be used. Given this index shows that Booroondara is the least disadvantaged municipality when compared with all the other LGAs in Greater Melbourne, the Commission does not accept the Council's submission that there are pockets of significant disadvantage in this municipality.
57. In the end, the social benefits of the proposal need to be weighed against the detriments to arrive at the net social impact. These are difficult matters to weigh and compare. However, on balance, the Commission considers that the likely social impact of the proposal is neutral.

CONCLUSION

58. 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

¹⁰ *Romsey* (2008) 19 VR 422, 438-9, 441-2.



impacts of approval on the wellbeing of the relevant community will be either neutral or positive.¹¹

59. 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 slightly positive.
60. 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 Ross Kennedy, Deputy Chairman.

¹¹ Romsey (2008) 19 VR 422, 435.