



# Victorian Commission for Gambling and Liquor Regulation

## DECISION AND REASONS FOR DECISION

In the matter of an application by Yadnum Pty Ltd under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* for amendment of the venue operator's licence to vary the number of gaming machines at the approved premises, the Cove Hotel, Precinct 10 Endeavour Cove, McLeod Road, Patterson Lakes, from forty-five (45) to fifty-three (53) gaming machines.

**Commission:** Miss Gail Owen, Deputy Chairman  
Mr Des Powell, Commissioner

**Appearances:** Ms Sarah Porritt for the Applicant

Ms Shahaan Murray as Counsel assisting the Commission

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

**Date of Hearing:** 23 January 2013

**Date of Decision:** 18 February 2013

**Signed:**

Miss Gail Owen  
**Deputy Chairman**

## REASONS FOR DECISION

### INTRODUCTION

1. This is an application by Yadnum Pty Ltd (**Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) at the approved premises, the Cove Hotel, Precinct 10 Endeavour Cove, McLeod Road, Patterson Lakes (**Hotel**), from 45 to 53 EGMs.
2. The Applicant is owned by Melbourne Racing Club Investments Pty Ltd (**MRCi**), a wholly owned subsidiary of the Victoria Amateur Turf Club, trading as Melbourne Racing Club (**VATC**). MRCi operates multiple gaming venues under the name Pegasus Leisure Group (**PL Group**). MRCi purchased the Hotel on 22 December 2010.
3. The relevant municipal authority is the City of Kingston (**Council**). The Council opposed the application but did not appear at the hearing.
4. On 23 January 2013, the Victorian Commission for Gambling and Liquor Regulation (**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*.

### LEGISLATIVE FRAMEWORK AND THE COMMISSION'S ROLE

5. The Commission's role is to determine the application before it pursuant to the *Gambling Regulation Act 2003 (Act)*.<sup>1</sup> The Act recognizes that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and some members of some communities.<sup>2</sup> For this reason, the Act includes safeguards to ensure a balance is struck between accommodating a lawful and legitimate recreational activity and minimising harm. In making its determination, the Commission must be satisfied that, among other things, the net economic and

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<sup>1</sup> Section 3.4.20

<sup>2</sup> Section 1.1(2)

social impact of the new EGMs on the well-being of the community will not be detrimental (**no net detriment test**).<sup>3</sup>

6. The no net detriment 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**

7. The Applicant filed with the Commission the following materials, among others, in support of its application:
  - Social and Economic Impact Assessment, prepared by Ratio Consultants Pty Ltd (**Ratio**) dated September 2012;
  - Social and Economic Impact Assessment - Addendum Report, prepared by Ratio dated January 2013;
  - Expenditure Report, prepared by Progressive Venue Services (**PVS**) dated May 2012;
  - Witness statement of Mr Simon Gerard Gardner dated October 2012; and
  - Witness statement of Mr Ian Moore dated October 2012.
8. In opposition to the application, the Council filed a Community Attitudes Towards Gambling Report compiled by Capire Consulting Group Pty Ltd and an Economic and Social Impact Submission dated 20 December 2012.
9. The Commission also had before it a statistical report titled Economic and Social Impact Report dated January 2013 (the **Commission Report**) and a Pre-hearing Inspection and Compliance Report both of which were prepared by Commission officers.

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<sup>3</sup> Section 3.4.20

## THE CITY OF KINGSTON AND THE COVE HOTEL

10. The City of Kingston (**Kingston**) is a metropolitan Local Government Area (**LGA**) located about 25 kilometres south-east of the Melbourne CBD and comprising the major suburbs of Cheltenham, Moorabbin and Chelsea. Kingston comprises two statistical local areas (**SLAs**), Kingston – North and Kingston – South. The club is situated in the suburb of Patterson Lakes in Kingston – South SLA.
11. Kingston LGA is subject to a municipal cap of 1,135 EGMs.<sup>4</sup> There are currently 16 venues operating 872 approved EGMs in the LGA. The EGM density and expenditure in Kingston LGA is above average when compared to other metropolitan municipalities and the Victorian average. Kingston LGA is ranked 5<sup>th</sup> highest of 31 municipalities in respect of EGM expenditure per adult.
12. The material before the Commission indicated that on the Social and Economic Index of Disadvantage (**SEIFA**), Kingston-South SLA is relatively not disadvantaged, ranking 43<sup>rd</sup> out of 79 metropolitan SLAs.

### ***Evidence from Leigh Barrett***

13. Mr Leigh Barrett is the Director of Leigh Barrett and Associates, which was engaged by PL Group to review their responsible gambling policies and procedures, audit venues in the PL Group and provide responsible service of gaming (**RSG**) training to staff.
14. Mr Barrett submitted a letter in support of the application to the Commission and gave oral evidence to the Commission.
15. In his letter, Mr Barrett stated that he found, during the course of the venue audits, that the PL Group venues, including the Hotel, were highly diligent in satisfying the regulatory requirements and the PL Group Responsible Gambling Code.
16. Mr Barrett considered that an increase of 8 EGMs at the Hotel will have a minimal impact on the potential for increased problem gambling based on his assessment of the Hotel's layout and management. He stated that he had visited the Hotel on five

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

occasions and found that there was a strong interaction between the staff and patrons, and a minimum of two staff were rostered in the gaming room. Further, he gave evidence that all the Hotel staff have completed RSG training.

17. Mr Barrett gave evidence that he provided reports on PL Group venues to Mr Gardner, the Chief Executive Officer (CEO) of MRCi and PL Group, two to three times per week and, in his experience, the PL Group responded quickly to problem gambling issues reported by venues.

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

18. The Applicant engaged Mr Michael Clyne of PVS, to provide the expenditure report submitted with the application. Mr Clyne was also gave evidence at the hearing.

19. Applying the Geotech Model, Mr Clyne considered that the likely increase in expenditure resulting from an increase of 8 EGMs at the Hotel was \$605,050 per annum, of which \$485,577 per annum, being 80.3%, is expenditure transferred from other venues.<sup>5</sup> His estimated change in expenditure in Kingston LGA is \$390,611 comprising expenditure transferred from venues outside Kingston LGA and new expenditure of \$119,473.

20. Mr Clyne gave evidence that the predicted high rate of transferred expenditure reflected the fact that the application was unlikely to attract new patrons to gaming due to the current levels of well-established gaming venues in the surrounding area.

### ***Evidence of Simon Gardner***

21. Mr Simon Gardner is the CEO of MRCi. Mr Gardner provided a written statement and was examined.

22. Mr Gardner gave evidence that VATC is a not for profit organisation with a volunteer committee, four members of which are directors of MRCi and the Applicant.

23. Mr Gardner stated that PL Group venues reported venue operating matters, including responsible gambling issues, to Mr Ian Chapman, Operations Manager at MRCi, at first instance and, in his opinion, the Applicant's board were aware of the

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<sup>5</sup> The Geotech Model as originally developed in 2007 and is a geo-spatial model that aims to simulate the choices of consumers to predict venue revenue.

revised gaming regulatory framework as he reported regularly to MRCi's board about venue-related issues.

24. In respect of the Applicant, Mr Gardner stated that, to his knowledge, the Treasurer was the only board member to have completed RSG training.

25. Mr Gardner gave evidence that the PL Group has adopted a code of conduct, which was recently reviewed and amended by Leigh Barrett and Associates. He stated that the venue has a strong relationship with Gamblers Help Southern.

26. Whilst the Commission accepts that Mr Gardner has authority to speak on behalf of the Applicant, the Commission is troubled that no officer of the Applicant was available to be examined at the hearing and that only one of the Applicant's directors has completed RSG training.

27. Mr Gardner gave evidence that, current community contributions of \$7,000 would be increased by the Applicant to \$10,000 per annum. Since the hearing the Commission has been provided with written undertaking consistent with Mr Gardner's statement. In addition, Mr Gardner stated that the Applicant proposed to build two community rooms at the Hotel at a cost of \$150,000. The community rooms would be made available, free of charge, to community groups.

28. Mr Gardner acknowledged that the rooms would not be built for the exclusive use of community groups. He stated that community groups would have priority usage from 9am to 5pm, Monday to Friday, which were the times that the Hotel had identified as being most in demand by community groups.

29. Mr Gardner gave evidence that MRCi needed to diversify its business as profits from its racing business are decreasing and an increase in EGMs was one way of increasing revenue.

### ***Evidence of Ian Moore***

30. Mr Ian Moore is the General Manager of the Hotel. Mr Moore gave a written statement and was examined.

31. Mr Moore has worked at gaming venues owned by MRCi since December 2003, and became the General Manager of the Hotel in January 2011. Mr Moore gave

evidence that, in respect of good responsible gambling practices at the Hotel, a recent refurbishment had improved the visibility of the gaming floor for gaming staff and the Hotel maintains a strong relationship with Gambler's Help Southern. He confirmed that Mr Barrett had audited the Hotel and was satisfied with the RSG provision.

32. Mr Moore stated that the Hotel had established relationships with local community groups, some of which, such as Bonbeach Football Club and Patterson Fire Brigade, have expressed an interest in using the proposed community rooms at the times proposed by the Applicant.

33. Mr Moore considered that an additional 8 EGMs would improve the EGM choice for patrons gaming during peak periods when the Hotel cannot meet demand for EGMs.

#### ***Social and Economic Impact Statement – Ratio***

34. The Applicant engaged Ms Coleen Peterson, Director of Ratio, to prepare a report in support of the application. Ms Peterson was also examined at the hearing.

35. A patron survey was conducted in the gaming room at the Hotel over a period of two weeks. Ms Peterson gave evidence that, according to the survey, the primary patron catchment area (57.4% of patrons) was Patterson Lakes and Carrum.

36. Ms Peterson stated that, although there was some disadvantage in the areas surrounding the patron catchment area, it was her opinion that there were few signs of social or economic disadvantage in Kingston LGA, as a whole, or the patron catchment area. In particular and in response to the Council's concerns about the disadvantage indicated by the levels of housing stress in the patron catchment area, Ms Peterson stated that the housing stress for rental payments was lower than the metropolitan Melbourne average and the disposable income in Patterson Lakes was higher than the metropolitan Melbourne average (by \$43.15). This would off-set the risk of housing stress in the catchment area.

37. In Ms Peterson's opinion the 8 additional EGMs sought by the Applicant would have a nominal economic and social benefit to the community of Kingston LGA resulting from the:

- availability of rooms for community use during non-peak periods;
- employment of two additional staff;
- community contributions of \$10,000 per annum; and
- improved access to gaming patrons in Kingston LGA at peak gaming times at the Hotel.

38. Ms Peterson acknowledged that the community rooms would not be dedicated to community use and the Hotel could derive a commercial benefit from the rooms when not being used by community groups. She stated that, in her opinion, the community nevertheless would derive a benefit from the application because the rooms would not be available for community use if the application were not granted.

39. Ms Peterson gave evidence that the potential disbenefit to the community of the application was, as a result of the increase in gaming expenditure, the risk of exacerbating problem gambling. Ms Peterson stated that this risk is mitigated by MRCi implementing harm minimisation practices, including a Responsible Gambling Policy, venue specific initiatives, and complying with statutory requirements. Further, she stated that the proposed 8 additional EGMs would not result in an unacceptable exposure to gaming for the residents living in the patron catchment areas because:

- gaming expenditure is decreasing in Kingston LGA;
- residents already have a high level of exposure to gaming venues;
- the Hotel is not located in a position that attracts convenience gambling;
- the Hotel's focus was dining and entertainment; and
- the limited increase in EGMs is unlikely to change the 'attractiveness' of the Hotel to problem gamblers.

### ***The Council's economic and social impact submission***

40. The Council filed an economic and social impact submission with the Commission. The Council noted the link between the risk of problem gambling and the following factors:



- higher numbers of residents at risk of problem gambling, including residents from non-English speaking backgrounds and those living in public housing;
- EGM density in Kingston LGA, which is currently higher than the Victorian and metropolitan Melbourne averages and will increase if the application is granted;
- the number of gaming venues in Kingston LGA, which host the third highest number; and
- the patron catchment areas of the Hotel being relatively socially disadvantaged.

41. The Council conducted a community survey, 236 of which were completed, and conducted community engagement exercises to gauge community opinion about the application. The Council noted that 52% of survey respondents reported not wanting additional EGMs to be installed at the Hotel and about 30% of respondents reported that approval of the application would decrease their sense of happiness, contentment and sense of wellbeing.

42. The author of the Council's submission was not made available for cross-examination at the inquiry. Whilst the Commission accepts that the document provided by the Council is of assistance, it must reduce the weight it places on it, as the Applicant and Counsel Assisting the Commission were unable to test its contents.

## **FINDINGS BY THE COMMISSION**

### ***Economic impact***

43. The Commission accepts that there will be an economic benefit from the application, namely, the predicted increase in revenue of \$605,050 per annum, the Applicant will employ two additional full time equivalent staff and the Applicant will build the community rooms at a cost of \$150,000 to improve the facilities at the Hotel. The Commission notes that there is a risk that the majority of the economic benefit created by the increase in revenue from the EGMs will be derived by MRCi, rather

than the community, due to MRCi's businesses being remote from the LGA in which the Hotel is situated.

44. The Applicant indicated that it was willing to accept conditions on the approval of the application, including a condition to comply with an undertaking to distribute the \$10,000 cash community contribution as determined by a committee comprising representatives of the Applicant and the Council.
45. The Commission is of the view that the cash contribution of \$10,000 per annum to be provided by the Applicant to the community and the conditions on the approval that have been agreed to by the Applicant mitigate the risk of the application creating a disbenefit to the community. Accordingly, the Commission considers that there will be a neutral economic impact on the community should the application be granted.

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

46. The approval of any new EGMs has the potential to increase problem gambling and the effects of problem gambling. The Commission considers this risk to be heightened by the location of the venue in a community that demonstrates relative social and economic disadvantage and the remoteness of MRCi, a key decision maker in respect of the venue, from the Applicant and the venue. Further, the Commission notes the potential for tension between the commercial interests of MRCi to generate profits for investment in the racing industry and the responsible gambling obligations of the Hotel.
47. Where an applicant holds itself out to be committed to best practices in respect of responsible gambling, the Commission expects that those practices be established and governed at first instance by the Applicant's board. In this respect and although this is not a legislative requirement, the Commission expects that all the Applicant's directors complete RSG training, rather than only the Treasurer.
48. The provision of additional EGMs at the Hotel, which operates at capacity for about 13.5 hours per week, will have social benefits for those consumers who cannot access EGMs or EGMs of their choice when the venue is fully occupied. Further, the Commission accepts that some social benefit will result from the community rooms proposed by the Applicant but considers the benefit to be nominal having regard to

the limited time during which the community will be given priority access to the rooms.

49. In view of the above and the conditions agreed by the Applicant to be on the approval, the Commission considers the social impact on the community of the application to be neutral.

### **Conclusion**

50. 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>6</sup>

51. The Commission is satisfied that it should exercise its discretion to grant the application subject to the below conditions.<sup>7</sup>

52. The Commission considers it necessary to impose the following conditions having regard to the risk that the benefit from the granting of the application will be derived by MRCi, rather than the local community:

- the Applicant must lodge an annual community benefit statement with the Commission;
- the Applicant must comply with the attached undertaking signed by a director of the Applicant on 24 January 2013;
- the Applicant must advise the Commission as soon as the construction of the two community rooms at the Premises generally in accordance with those depicted on drawing COV-1185/SK-01 as prepared by TM Design Group and dated September 2011 are substantially completed. If the Commission has not been advised prior to the date that is 12 months after

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<sup>6</sup> *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation & Anor* [2009] VCAT 2275, 274

<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

the date of this decision (or such later date as agreed in writing by the Commission) that the Works have been substantially completed, this approval will lapse;

- the Commission may, on receipt of a request from the Applicant, extend the time during which the Works must be substantially completed in accordance with the conditions of this decision. The request must be made to the Commission in writing, state the reasons as to why the Works will not be substantially completed within 12 months of the date of this decision and be lodged no later than 30 days prior to the date that is 12 months from the date of this decision.

53. The Commission has considered the likely social and economic impacts of the proposal and, having regard to the conditions outlined above, considers that those impacts are likely to be neutral.

**The preceding document is a true copy of the Reasons for Decision of Miss Gail Owen and Mr Des Powell.**