



# 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 Keilor East RSL Sub-branch Inc for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises, the Keilor East RSL, 12-22 Hoffmans Road, Essendon from 25 to 39 gaming machines.

**Commission** Mr Ross Kennedy, Acting Chairman  
Ms Kate Hamond, Commissioner

**Appearances** Ms Jennifer Trehwella of Counsel for the Applicant  
(instructed by Williams Winter Solicitors)  
Mr Bronte Campbell as Counsel Assisting the  
Commission

**Date of Hearing** 19 March 2015

**Date of Decision** 29 April 2015

**Decision** That the application be granted.

**Signed**

**Mr Ross Kennedy**

Acting Chairman



## REASONS FOR DECISION

### INTRODUCTION

1. This is an application by Keilor East RSL Sub Branch Incorporated (**the Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Keilor East RSL, 12-22 Hoffmans Road, Essendon (**the RSL**) from 25 to 39 EGMs.
2. The relevant municipal authority is the City of Moonee Valley Council (**the Council**). On 27 February 2015, the Council provided the Victorian Commission for Gambling and Liquor Regulation (**the Commission**) with a submission assessing the social and economic impact of the application. The Council 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.<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, 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>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).



5. Further, 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 wellbeing 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.<sup>4</sup>

## THE CITY OF MOONEE VALLEY AND KEILOR EAST RSL

6. The City of Moonee Valley (**Moonee Valley**) is a metropolitan Local Government Area (**LGA**) located approximately 10km north-west of Melbourne and includes the major suburbs of Essendon, Avondale Heights and Moonee Ponds. Moonee Valley is comprised of two Statistical Local Areas<sup>5</sup> (**SLA**), Moonee Valley – Essendon and Moonee Valley – West. The RSL is located on the western boundary of the Moonee Valley – Essendon SLA.
7. In terms of social and economic disadvantage, Moonee Valley presents as relatively advantaged, ranking as the 19<sup>th</sup> least disadvantaged of Victoria's 79 municipalities on the SEIFA scale of disadvantage<sup>6</sup>. The area surrounding the RSL presents as similarly advantaged, with 67.9% of SA1s in the fourth and fifth quintiles of disadvantage and only 0.7% of SA1s in the first quintile of disadvantage.
8. Moonee Valley is subject to a municipal cap on gaming entitlements of 746.<sup>7</sup> Currently there are 732 EGMs operating in 11 gaming venues across the municipality. Approval of this application will take the number of gaming machines operating in Moonee Valley up to the municipal limit. Moonee Valley is characterised by above average gaming statistics, with
  - 8.1. a density of 7.81 EGMs per 1,000 adults (42% greater than the metropolitan average and 34% greater than the State average); and
  - 8.2. annual expenditure per adult of \$770 (35% greater than the metropolitan average and 40% greater than the State average).

<sup>4</sup> *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [247] – [249].

<sup>5</sup> 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.

<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. SEIFA allows the ranking of regions/areas, providing a method of determining the level of relative social and economic well-being in each region. The SEIFA scale of disadvantage ranks municipalities from least disadvantaged to most disadvantaged on a relative basis.

<sup>7</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.



9. Expenditure in the municipality is declining and has decreased by 12.5% in real terms<sup>8</sup> over the last five years. While declining expenditure is common in metropolitan municipalities, it is noted that expenditure in Moonee Valley is declining at a slightly slower rate than the metropolitan average across Victoria (12.77%).
10. The Applicant did not dispute the above average levels of expenditure and gaming density within Moonee Valley, noting that the Commission's task is to assess the incremental impact likely to result from approval of the Application.

### THE MATERIAL BEFORE THE COMMISSION

11. The Applicant provided the Commission with the following material to assist it in assessing the social and economic impact of the application:
  - 11.1. Socio-Economic Impact Report, prepared by Mr Nick Anderson of NBA Group Pty Ltd, dated 27 October 2014;
  - 11.2. Gaming Expenditure Estimate Report, prepared by Mr Michael Clyne of Progressive Venue Services, dated December 2014;
  - 11.3. Witness Statement of Mr William Arthur Laker, President of the Keilor East RSL Sub-Branch, dated 2 December 2014;
  - 11.4. Witness Statement of Mr Gavin Comport, Operations Manager of the Keilor East RSL Sub-Branch, dated 2 December 2014; and
  - 11.5. Witness Statement of Ms Leanne Parker, Office Manager of the Keilor East RSL Sub-Branch, dated 2 December 2014.
12. The Council provided the Commission with a Social and Economic Impact Assessment, prepared by Ratio Consultants, dated February 2015.
13. Additionally, the Commission considered an Economic and Social Impact Report and Pre-Hearing Inspection and Compliance Report dated March 2015 prepared by VCGLR staff.



### **RSL Witnesses**

14. The Applicant called the following three witnesses to give evidence as to the operations of the RSL:
  - 14.1. Mr Gavin Comport, General Manager and is responsible for the day to day running of the RSL including staffing and liquor and gaming compliance;
  - 14.2. Mr William Laker, who was appointed President of the Applicant in 2014 and has served on the Applicant's executive since 2004; and
  - 14.3. Ms Leanne Parker, Office Manager and is responsible for the Applicant's provision of welfare and charitable services to its members and the local community.
15. The Applicant was established in 1954 and has been in its current location since 1970. The Applicant's primary purpose is to maintain the welfare of veterans, widows and their dependents and to preserve the memory of servicemen. The Applicant also provides welfare and charitable services across the north-west region of metropolitan Melbourne, supporting local community groups and schools and delivering numerous initiatives intended to increase the social inclusion and wellbeing of elderly people.
16. The Applicant currently has 1,616 members, made up of 394 Service Members, 613 Affiliate Members, 514 Social Members and 95 Community Members. In recent years, the Applicant has conducted membership drives focused on broadening its membership base and promoting the RSL to young families. As a result of these initiatives, membership has grown from 1,254 members in 2012 and the Applicant anticipates membership will continue to grow in the coming years.
17. The Applicant's work has been recognised among its peers with the Sub-Branch being awarded RSL Commendation for Best Licensed Sub-Branch (Group 1) in 2011 and 2013. In 2014, the Applicant was awarded the Victorian Licensed Sub-Branch of the Year Award and Mr Gavin Comport and Ms Leanne Parker were awarded individual Achievement and Recognition Awards. The Applicant is immensely proud of these achievements.
18. The Applicant is increasing its welfare budget yearly. In 2013, the Applicant spent \$148,315 on welfare and support initiatives and in 2014 it spent \$220,679. In 2015, the Applicant has budgeted \$228,480 for expenditure on welfare and support initiatives, however expects that actual expenditure will exceed this amount. Some examples of the charitable and welfare work include:



- a pension officer to assist veterans and widows in accessing entitlements and lodging claims with the Department of Veterans Affairs;
  - veterans' lunch days (twice per month) for up to 60 members;
  - yearly ANZAC and Poppy Appeals – in 2013 the Applicant's Poppy Appeal raised \$83,148 and in 2014, the Applicant's ANZAC appeal raised \$103,000;
  - donation of 2,000 lollipops to the Cancer Department of the John Fawcner Hospital to ease taste distortion experienced by those undertaking chemotherapy;
  - a \$15,000 donation to Holloway Hostel Aged Care facility to assist with refurbishment and installation of new curtains in rooms;
  - organisation and hosting of Remembrance Day, Vietnam Veterans Day and ANZAC Day commemorations and services;
  - \$250 student scholarships provided to 26 primary schools to assist a student with transitioning from Year 6 to Year 7;
  - six \$1,000 bursaries to selected primary schools to assist in developing literacy skills of students in Year 2 and below;
  - sponsorship of local underprivileged children to attend camps and youth development programs; and
  - the recent purchase of a welfare bus (at a cost of \$55,846) which will allow the Applicant to organise more regular excursions and day trips for members and reduce social isolation.
19. The Applicant is supported by revenue generated through its membership fees and the food, beverage and gaming facilities offered at the venue. In terms of facilities, the RSL is currently comprised of:
- a reception area, which currently does not have a dedicated receptionist;
  - a bistro, which is able to seat 120 patrons and is open 6 days a week for lunch and dinner and doubles as a function space;
  - a gaming lounge, with 25 EGMs;
  - a members lounge; and
  - limited office space.
20. In addition to its hospitality offer, the Applicant conducts regular activities at the venue for the benefit of its members, including Morning Melodies, pool competitions, musical acts and weekly film screenings. The Applicant also provides subsidised meals for seniors on a year-round basis and offers use of the RSL to community groups such as Legacy and Rotary free of charge.



21. The Applicant intends to use the revenue generated from an increase in gaming machines to undertake a large scale renovation of the venue (estimated at a cost of \$2.2 million) which will include extension of the bistro, addition of function facilities which can be used independently from the bistro, a redesigned reception desk, relocation of offices to the first floor and expansion of the gaming lounge (necessary to accommodate the additional EGMs).
22. The additional revenue will also be used to employ two full-time and one casual reception staff members who will be responsible for greeting and signing in members and three casual (equivalent to one full-time) food, beverage and gaming staff members. Any surplus revenue will be used to support the Applicant's welfare and community support services.
23. The Applicant takes its responsible service of gambling obligations seriously, engaging Leigh Barrett & Associates to conduct regular reviews of the venue's regulatory compliance, to assist with development of venue's RSG policies and to undertake staff training. The Applicant also maintains a strong relationship with Gambler's Help Northern, with representatives visiting the RSL up to 8 times per year to assist with staff training. The Applicant prides itself on providing a safe and supervised gambling environment.

#### ***Expenditure Estimate***

24. The Applicant engaged Mr Michael Clyne to provide an estimate of the expenditure that would be generated by an additional 14 EGMs at the RSL. The Clyne Report is based on the outputs of the Geotech Model which is used to estimate likely EGM expenditure in gaming venues. The Geotech Model is a retail gravity geo-spatial model which has been presented as evidence and accepted by the Commission, with some qualifications, on numerous occasions.
25. Mr Clyne told the Commission that the Geotech Model predicted that:
  - 25.1. an additional 14 EGMs at the RSL would result in increased expenditure of approximately \$1,371,914 in the first 12 months of operation;
  - 25.2. of this expenditure, approximately 95% will be transferred from existing gaming venues within Moonee Valley and neighbouring municipalities; and
  - 25.3. after taking into account expenditure transferred from gaming venues within and outside of the municipality, it is predicted that gaming expenditure will rise by \$68,595 in Moonee Valley in the first 12 months of operation.



26. In Mr Clyne's view, the Geotech Model's estimate is likely to be overstated due to the above average performance of EGMs currently operating in the venue and increased 'facility score' (a model input). Mr Clyne noted that, should the Geotech Model's estimate prove to be accurate, per machine revenue (including the EGMs currently operating at the RSL) would rise which, in his experience, would be unusual in the context of a stable gaming market and an increase of EGM numbers at an already established venue.
27. Given this, Mr Clyne told the Commission that, in his opinion, it would be appropriate to discount the Geotech Model's prediction by 25%. Applying this discount rate, it is estimated that an additional 14 EGMs at the RSL would result in increased expenditure of approximately \$1,028,924 in the first 12 months of operation. Accounting for 95% of the increased expenditure to be transferred from other gaming venues, Mr Clyne estimated that EGM expenditure within Moonee Valley will rise by \$51,445 in the first 12 months of operation.
28. The Commission considers Mr Clyne's estimate to be reasonable in this case, noting that the gaming market in Moonee Valley is stable with above average density and expenditure. Should Mr Clyne's estimation prove to be accurate, approval of this application will result in a projected increase in per head expenditure of 0.6%.

#### **NBA Report**

29. The Applicant engaged Mr Nick Anderson, a Director of NBA Group Pty Ltd, to prepare a social and economic impact statement to accompany the application. Mr Anderson gave evidence at the hearing of the application. The Commission accepts that Mr Anderson is qualified to give an informed opinion on the likely social and economic impacts of this application.
30. Mr Anderson told the Commission that based on an assessment of the municipal profile of Moonee Valley, the area surrounding the venue and the material provided to him by the Applicant, approval of the application would result in a net benefit to the community. In coming to this conclusion, Mr Anderson noted the following factors:
  - 30.1. The RSL is located in the suburb of Essendon, which presents as a relatively advantaged area with robust social and economic indicators. As such, the impacts of problem gambling are likely to be more easily absorbed compared with a more disadvantaged area;
  - 30.2. Based on Mr Clyne's estimate, the increase in net expenditure in Moonee Valley is modest and unlikely to have any significant impact on the municipality;





- 30.3. Approval of the application will allow the Applicant to renovate the RSL and increase its hospitality offer. An improved venue will make the RSL more attractive and bring an increase in revenue. The addition of a dedicated function space that can be used by community groups is a benefit of the proposal;
  - 30.4. Any surplus revenue generated by the additional EGMs will be used to further the Applicant's community and welfare services;
  - 30.5. The town planning component of the Applicant's proposal received approval from the Council. This indicates support for the Applicant's proposal at Council and community levels; and
  - 30.6. An additional 14 EGMs at the venue will provide an increased variety of machines for those patrons choosing to gamble responsibly at the venue.
31. Mr Anderson commented that, in his broad experience dealing with RSL Sub-Branches in town planning and gaming matters, he considers the Applicant to be one of the more proactive Sub-Branches, both in terms of the welfare services and regulatory compliance. Mr Anderson told the Commission that prior to giving his evidence, he contacted the venue support worker at Gambler's Help Northern who provided him with a list of the interactions the Applicant had with Gambler's Help Northern in the preceding year. This list, which records 17 interactions, is the highest level of interaction that Mr Anderson has seen between a gaming venue and the Gambler's Help support services. In Mr Anderson's view, this is an endorsement of the Applicant's attitude towards regulatory compliance and minimising harm associated with problem gambling.
32. Mr Anderson told the Commission that he had considered the Social and Economic Impact Report provided by the Council and broadly agreed with its findings social and economic standing of Moonee Valley. Mr Anderson noted that the Council report recommended that, should the application be approved, a condition be imposed on the approval requiring the Applicant to provide a set amount to a community fund to provide 'transparent and equitable' allocation of community contributions. In Mr Anderson's view, such a condition is unnecessary as it is clear that the RSL is committed to its welfare objectives. Mr Anderson commented that such a condition might be more appropriate if the applicant was a hotel or a sporting club rather than an RSL.



### **Council Material**

33. The Council engaged Ratio Consultants Pty Ltd, to assess the social and economic impact approval of the application would have on the community of Moonee Valley (**the Ratio Report**).
34. The Ratio Report confirmed that Moonee Valley presents as a relatively advantaged municipality and that the area surrounding the RSL, from which it can be expected patrons will be drawn, does not exhibit signs of significant disadvantage. The Ratio Report also noted that unemployment and housing stress in the patron 'catchment area' are below metropolitan and State averages which is indicative of a more robust and affluent community.
35. The Ratio Report considered the renovation of the RSL to be a significant benefit of the application and an increase of 14 EGMs will improve consumer choice which should also be seen as a benefit. Additionally, Ratio noted that the RSL has modest operating hours and is closed for a minimum of 10 hours per day, which acts as a limitation to problem gambling.
36. The Ratio Report concluded that approval of the application will have 'no net detriment on the local community and more broadly with respect to the City of Moonee Valley'.

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

37. There is often a large degree of overlap between economic and social impacts of applications to operate EGMs. The Commission considers it useful for the purpose of balancing community benefits and detriments that a thorough analysis and identification of the economic and social impact on the community be undertaken.
38. The Commission accepts that approval of this application will result in an increase in gaming expenditure at the RSL of approximately \$1,028,924 in the first 12 months of operation. The Commission also accepts that, due to the maturity of the Moonee Valley gaming market, the majority of this expenditure will be transferred from other venues within the municipality. The Commission considers that the Geotech Model's predicted transfer percentage of 95% to be not unreasonable.
39. Accordingly, it can be expected that approximately 5%, or \$51,445, of the predicted increase in expenditure at the RSL will be new expenditure. In the context of a municipality with a high gaming machine density and high levels of gaming expenditure, such an increase is nominal. As such, the Commission considers there will only be a nominal benefit associated with this application through economic stimulus.



40. In terms of the economic costs of the application, the Commission similarly considers these to be nominal. Approval of the application will result in a small loss of gaming revenue for a number of gaming venues. The Commission considers it to be preferable that an organisation with a community focus and charitable goals, such as the Applicant, is the beneficiary of gaming revenue.
41. The Commission considers that the cost of the proposed renovation at the RSL (approximately \$2.2 million) will provide an economic stimulus and be a benefit. The Commission also considers the improvements to the RSL will increase its attractiveness and foster competition. This also should be seen as an economic benefit.
42. Accordingly, the Commission considers that there will be a positive economic impact on the community if the application were to be approved.

#### **LIKELY SOCIAL IMPACT OF APPROVAL**

43. 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. While the Commission accepts that approval of this application will result in a small increase to accessibility, the Commission considers this to be insignificant in a municipality with a mature gaming market and high gaming density.
44. The Commission notes the above average levels of EGM density and expenditure within this municipality, however, nothing in the material before the Commission was suggestive of a municipality with concerning levels of problem gambling or related social harms.
45. The Commission considers the key social benefit of this application to be the strengthening of the financial position of the Applicant. The Commission was impressed with the welfare services that the Applicant provides to its members, their families and the wider community. The Applicant has a very strong impact on the day-to-day lives of those who are assisted by its welfare and community work which is well regarded by the Commission, and its continuation is a clear benefit to the community of Moonee Valley.
46. The Commission considers an improved venue, and in particular the addition of dedicated function facilities, to be an additional social benefit. Overall, the Commission considers approval of the application will have a positive social impact on the community of Moonee Valley.



## CONCLUSION

47. The no net detriment test in section 3.4.20(1)(c) of the Act requires the Commission to weight 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 wellbeing of the relevant community will be either neutral or positive.<sup>9</sup>
48. After consideration of the material put forward by the Applicant and submission received from the Council, it is concluded that the social and economic impacts of the proposal are likely to be positive.
49. The Commission is satisfied that the Applicant understands and will continue to act on its obligations to, so far as is reasonable, take measures to prevent problem gambling. The Commission notes the strong and consistent participation by the Applicant in the Moonee Valley Liquor Accord, and considers this to be indicative of the Applicant's positive attitude towards its regulatory compliance obligations.
50. On the material that has been put before it, the Commission is satisfied of the other matters in section 3.4.20(1). 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 Ross Kennedy, Acting Chairman and Ms Kate Hamond, Commissioner.***

---

<sup>9</sup> Romsey (2008) 19 VR 422, 435.