



DETERMINATION OF AN APPLICATION BY L'UNICO PTY LTD FOR AMENDMENT OF ITS VENUE OPERATOR'S LICENCE

1. Background

- 1.1. This is an application by L'Unico Pty Ltd (Applicant) under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* (Act) for amendment of its venue operator's licence (VOL) to vary the number of electronic gaming machines (egms) at the approved premises at L'Unico Hotel, 3/9 Clayton Road, Clayton from 28 to 35.
- 1.2. As required by section 28(2)(g)(iii) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* (Vic), a public inquiry was convened. The inquiry was conducted over two days and both the Applicant and the City of Monash (Council) were represented and called evidence.

2. The Commissioners

- 2.1. The Commissioners by whom the application was determined were Mr B. Thompson (Chair), Miss G. Owen and Ms K. Hamond.

3. The Decision

- 3.1. The Commission has determined that the application be granted.

4. The Relevant Authority – the City of Monash

- 4.1. Section 3.4.19(1) of the Act gives the Council a right to make a submission:
 - 4.1.1. Addressing the economic and social impact of the proposed amendment on the well-being of the community of the municipal district in which the venue is located; and
 - 4.1.2. Taking into account the impact of the proposed amendment on surrounding municipal districts.
- 4.2. In this case, Council made a written submission and appeared at the inquiry to oppose the application.

5. Determination of the Application

- 5.1. Determination of this application is governed by section 3.4.20 of the Act, which states that the Commission must not amend a VOL unless the Commission is satisfied that:



- 5.1.1. Amendment of the licence does not conflict with a Ministerial direction given under section 3.2.3. of the Act;
- 5.1.2. The regional or municipal limit for egms for the region or municipality in which the venue is located will not be exceeded by the making of the amendment; and
- 5.1.3. The net economic and social impact of the amendment will not be detrimental to the well-being of the community of the municipal district in which the approved venue is located.

6. The Proposal

- 6.1 The L'Unico Hotel (the Hotel) is located in the capped region of the City of Monash which is subject to a limit of 623 egms. The Hotel has operated 35 egms in the past but was required to reduce that number by 7 when the current cap was introduced in 2007. The entitlement auction held in May 2010 has essentially created a redistribution of egms within this capped region. The Applicant is attempting to revert to its previous egm numbers (35) as part of this post auction redistribution process.
- 6.2 At the time of the hearing, the Applicant had not purchased the additional entitlements but intends to do so should the application be approved.
- 6.3 The venue was inspected by the Commission on Wednesday, 7 March, 2012. It is prominently located on the corner of Clayton and Haughton Roads adjacent to the Clayton railway station and at the northern end of a busy shopping and activity centre. According to the evidence presented, it was not originally designed as a hotel but has "morphed" over time from a shopping arcade into its current form which, in its present construct, appears to be functionally and aesthetically sub optimal.
- 6.4 It does, however, provide a number of entertainment options for its patrons and includes a bistro, a TAB/sports bar, a gaming lounge and courtyard, a small function room and a restaurant operated by a third party. The gaming room is busy and has a high turnover, its net revenue per egm being one of the highest in the state.
- 6.5 Mr Golotta is a director of the Applicant and the owner and operator of the Hotel. He has recognised the need to revitalise the venue which he described in his evidence as "very tired and run down". A description of the venue's current short comings was provided in his written evidence:

"the setup of the venue is out dated and not very practical. Because the venue was extended over a period of years, it does not flow between the various areas such as the bistro and sports bar and there are too many internal walls. As such, there are currently blind spots in the premises which prevent staff from monitoring all patrons at all times, increasing reliance on CCTV surveillance. There is a lot of wasted space. Again, because of the way the venue took place in stages, it is not well design (sic) by an architect with knowledge of the hospitality industry".
- 6.6 Mr Golotta is proposing to renovate and modernise the Hotel in order to improve amenity and functionality. Preliminary plans and schematics were provided to the Commission at the hearing and preliminary costings for those works total \$2.2m.



7. Consideration of the Evidence

The Relevant Area

- 7.1. There was some dispute between the parties as to the correct area for assessing the impact of the proposal and determining the relevant Socio-Economic Index for Areas (SEIFA) score, a measure of relative socio-economic disadvantage. The Applicant initially appeared to contend that the appropriate area was the Monash Local Government Area (LGA) as a whole, although in evidence it was suggested that the Monash South-West Statistical Local Area (SLA) might be more appropriate. The Council, on the other hand, argued that the appropriate area for analysis was the postcode of Clayton. The Economic and Social Impact Report prepared by the Commission officers (ESIR) examined the SEIFA in the 'immediate surrounding area', being a circular area of 2.5km surrounding the venue.
- 7.2. Whilst section 3.4.19 of the Act requires consideration of the impact on the 'municipal district', the Commission agrees with the Tribunal in *Bright New Bay Pty Ltd v Bayside CC*, that 'it may be appropriate to focus more keenly on the projected primary catchment of the venue'.¹ In evidence, Mr Quick appeared to agree, stating that 'the focus needs to be more narrow than the LGA as a whole'.
- 7.3. Once it is conceded that a narrower focus than the LGA is appropriate, the dispute over which area is to be preferred becomes somewhat academic. In this case, the SEIFA scores for the different areas – the Monash SW SLA, the Clayton postcode and the immediate surrounding area used in the ESIR – ranges between 1011 and 978. The Commission accepts the evidence of Mr Quick that the relative difference between an area with a score of 1011 and a score of 978 is likely to be 'very minimal'.
- 7.4. Having regard to the various SEIFA scores of the different areas and the appropriateness of a precautionary approach in deciding applications of this kind, the Commission is satisfied that the area surrounding the venue is somewhat disadvantaged, but accepts that it is not extremely disadvantaged (quantified by Mr Quick in his oral evidence as below 850).

Adverse Impacts of the Proposal

- 7.5. Council's objection to the proposal was said to arise from two matters:
 - 7.5.1. The overall increase in egm expenditure in the relevant area caused by the variation; and
 - 7.5.2. The movement of egms into what Council alleged was a 'high risk' venue.
- 7.6. There was significant debate before the Commission as to the overall increase in expenditure that approval of the application would produce. Mr Whitehouse gave evidence that he anticipated that the additional machines would produce an increase of \$763,935, or approximately 0.61%, to overall gaming expenditure in Monash. He stated, however, that he expected that increase to be offset by the removal of machines from venues operated by the Australian Leisure and Hospitality (ALH) Group, the so-called 'ALH effect', as ALH had not purchased sufficient gaming entitlements to permit it to continue to maintain its existing number of machines in Monash. Mr Whitehouse estimated that the removal of

¹ [2010] VCAT 1347, [38].



these machines would result in a reduction in overall expenditure of \$745,160, or approximately 0.60%. This being so, he estimated that approval of the application would result in a net increase in gaming expenditure of \$18,235.

- 7.7. The Council did not seriously contest these figures, but argued that the ALH effect might not eventuate. Council pointed to the possibility that ALH might seek to 'backfill' its venues in Monash, by amending its VOLs for venues outside Monash.
- 7.8. The Commission considers that it is appropriate to have regard to both 'existing conditions and likely future conditions affecting gambling in the municipality.'² It accepts the evidence of Mr Whitehouse that the ALH effect is likely to occur, given what is currently known. At the same time, the possibility that ALH might seek to 'backfill' some of its venues cannot be excluded. Accordingly, the Commission considers the overall increase in egm expenditure is likely to be small, although it may not be as small as Mr Whitehouse anticipates.
- 7.9. The Council argued that the venue was a high risk venue, due its existing high levels of performance (in terms of net machine revenue), its location in a capped area and in a strip shopping centre and the vulnerability of the surrounding community. The Council argued that it was preferable that egms should not be added to high risk venues.
- 7.10. The Commission accepts that in this application it is required to consider the 'marginal impact' of adding a further 7 machines in the venue.³ It may be accepted that the venue is a very high performing venue. Mr Whitehouse conceded that it is currently the 16th best performing venue in terms of net machine revenue in the State, and would become the 11th if his predictions about increased revenue were correct. The mere fact that a venue performs well does not, however, make it a problem venue, but the Commission accepts that higher performing venues may well have higher risk profiles.
- 7.11. That said, the Commission is concerned about the convenient nature of the venue. It is well located to attract customers and it is reasonable to infer that its unusually strong performance is partially a reflection of that. The Commission accepts that the venue is already in existence and already operating 28 egms. That does not mean, however, that the installation of additional egms poses no further risk to anyone. Rather, the Commission considers that the addition of a further 7 egms is likely to somewhat increase the risk of problem gambling in the area.
- 7.12. The Council also argued that the make-up of the community in the area is likely to exacerbate any harm caused by the installation of additional egms. In particular, Council points to the low SEIFA scores in nearby areas as well as the high number of international students and people from culturally and linguistically diverse (CALD) backgrounds. These groups, Council argued, were at particular risk of becoming problem gamblers.
- 7.13. As stated above, the Commission accepts that the area around the venue has a below-average SEIFA score and that it may draw clientele from significantly disadvantaged areas, such as Springvale. The Commission considers that this has the potential to exacerbate any harmful impact caused by the installation of the additional machines.
- 7.14. The Commission accepts, as it has previously,⁴ that international students may be at an increased risk of problem gambling. Equally, however, the Commission has previously

² *Club Italia Sporting Club v Brimbank CC* [2011] VCAT 2378, [32]

³ *Branbeau Pty Ltd v Victorian Commission on Gambling Regulation* [2005] VCAT 2606, [47]

⁴ *In the Matter of the Queensberry Hotel*, [64] – [66]



observed that the research on international student gamblers suggests that they are more likely to prefer other methods of gambling to that of egms outside casinos. As such, the Commission is not satisfied that the increase in machines at the venue poses a particular risk to international students. In support of its argument, Council referred to the decision of the Commission in *Victoria Hotel*. That decision, however, concerned a venue at which international students were physically resident. As such, the nature of the risk was, in the Commission's view, materially different from the present case.

- 7.15. In respect of CALD persons, the Commission's attention was drawn to research showing that persons from a CALD background have lower participation rates in gaming generally, but that there was a high prevalence of problem gambling among those who did participate.⁵ Given the limited material before it, the Commission considers that there is the potential for an increase in the number of machines to contribute to problem gambling among persons from a CALD background.
- 7.16. Taken in its entirety, the Commission considers that the grant of the variation has the potential to result in an increase in the risk of problem gambling in the relevant area.

Responsible Service of Gaming

- 7.17. In the area of responsible service of gaming, Council was critical of the Applicant for having failed to do anything 'over and above what the venue is required to do by law'. Whilst it is always desirable that Applicants should go beyond their bare legal obligations, the Commission do not consider that it is necessary to do so in all cases.
- 7.18. In the present case, Mr Golotta gave evidence that he was committed to responsible service of gaming (RSG) and that he had experienced staff who were regularly re-trained in RSG. The Commission also notes the evidence of Mr Quick that the relatively small number of machines at the venue enhanced the scope for surveillance of gamblers, potentially making it easier to spot problem and self-excluded gamblers.

Benefits of the Proposal

- 7.19. The Applicant identified six benefits associated with the approval of the variation. These were:
- 7.19.1. Renovation of the venue;
 - 7.19.2. Community grants;
 - 7.19.3. New employment;
 - 7.19.4. Complimentary expenditure in Monash;
 - 7.19.5. Enhanced competition among gaming venues; and
 - 7.19.6. Increased accessibility of gaming machines.
- 7.20. The Commission accepts that the renovation of the venue would be a significant community benefit. As the Applicant conceded, the venue currently exhibits a significant emphasis on

⁵ Rich Yamine and Shane Thomas, *The Impact of Gaming on Specific Cultural Groups* (2000)



gaming. In the Commission's view, one of the major benefits of the renovation will be to dilute that emphasis and to increase the prominence of other aspects of the venue, such as the bistro.

- 7.21. The Commission further accepts that the addition of a community / function room at the venue will be a community benefit. Whilst there may be no 'critical need' for an additional function room in Clayton, as argued by Council, the addition of a function room at the venue will broaden consumer choice within Clayton. To that extent, it provides a benefit to the residents of the area. The Commission also notes Mr Golotta's evidence that the room will give priority access to community groups and that the Applicant will not charge such groups for use of the room.
- 7.22. Council was also critical of the proposed function room on the basis that it would not be accessible to disabled persons and the elderly. This criticism, although valid, is perhaps best addressed through the planning process. It may be that the Applicant and the Council are able to find some way to provide disability access to the community room.
- 7.23. The increase in community grants proposed by the Applicant, in response to increased revenue from the additional egms, is also a benefit. The Applicant initially committed to a donation of \$20,000 per annum for the next ten years, a substantial increase on its existing 'modest' community contributions. Following prompting from the Council, it agreed to increase its annual contribution to \$30,000 per annum. Whilst the community grants alone would not be sufficient to overcome the potential disadvantage associated with the proposal, the Commission is satisfied that they form a 'very positive adjunct' to the other benefits identified.⁶
- 7.24. The Commission also recognises the additional employment and complimentary expenditure that the renovation will provide as a significant benefit. The Applicant submitted that, all told, the renovation would create 6 to 8 permanent jobs and 11 temporary jobs during construction. These jobs would in turn create additional jobs which the Urbis report suggested to be in the vicinity of 40 jobs. The Applicant also submitted that the renovation would produce complimentary expenditure in the local area. Council queried the amount of additional employment and expenditure that would result from the renovation. The Commission notes that the Urbis figures are partly based on an estimate provided by the Applicant and may, ultimately, prove inaccurate. It was not suggested, however, that the renovation would not result in some degree of additional employment or expenditure in the Monash area.
- 7.25. In terms of enhanced competition and increased consumer choice the Commission accepts that these are benefits. They are, however, minor benefits. Any increase in the number of egms at a venue will, to a greater or lesser extent, enhance competition between venues and increase consumer choice. While these benefits are real, the Commission do not give them substantial weight.

Community Surveys

- 7.26. A number of community surveys were put into evidence before the Commission. The Applicant commissioned a survey from Ipsos, whilst the Council commissioned a survey from Metropolis Research.

⁶ *In the matter of the Royal Benalla Hotel*, [56]; see also *In the matter of the Francis Hotel*, [45]



- 7.27. Both surveys concluded that there was not majority support for the grant of the variation.⁷ The surveys differed on the level of overall opposition to the proposal. In the Ipsos poll, 60% of respondents initially opposed the variation, although this dropped to 29% when told that the renovation would not proceed without it. In the Metropolis poll, 45% of respondents opposed the variation.
- 7.28. It should be noted that Monash is not 'Romsey'. In the second decision of the Victorian Civil and Administrative Tribunal (VCAT) in *Romsey Hotel Pty Ltd v Victorian Commission on Gambling Regulation*, the introduction of egms to the only hotel in town was said to represent a 'fundamental challenge to the way the community sees itself'.⁸ There is no suggestion that the introduction of a further seven egms to Monash will have a similar impact. This is a factor in assessing the weight to be given to community opposition.
- 7.29. The other matter to be taken into account when considering the surveys are the reasons behind opposition (and support) for the proposal. Whilst the Applicant's polling did not identify the respondents' reasons for their views, Council's polling did investigate the respondent's reasoning.
- 7.30. As identified in the Metropolis poll, some 15% of respondents opposed the application on the basis that they were opposed to egms *per se*. This is a legitimate opinion, but it is not one that is open to the Commission. The Act requires the Commission to at least consider the grant of any application. As such, the Commission can give only limited weight to such objections.
- 7.31. A small proportion of respondents, approximately 6%, opposed the increase in egms on the grounds of traffic and parking problems. These are not wholly irrelevant in determining whether the variation will have an adverse social impact, but they are principally matters for the relevant planning authority. Again, the Commission gives limited weight to these objections.
- 7.32. The Commission also notes that there is a reasonable degree of support for the proposal, even though it did not amount to a majority.
- 7.33. Having regard to the Clayton Traders' survey, the Commission is unable to put any significant weight on this survey. The Traders' Survey was essentially an exercise in hearsay. Traders' perceptions were presented as fact and the Applicant was given no opportunity to test the evidence. In addition, many of the questions and answers were ambiguous. For example, when asked whether the increase in egms would have a negative impact on their business, some traders answered that it would. No distinction was made, however, between legitimate impacts arising from enhanced competition and other impacts arising from problem gambling.
- 7.34. In reaching its conclusion, the Commission has taken into account the overall opposition of the community to the grant of the application. In the circumstances of this case, and having regard to the impacts of the proposal identified above, the Commission considers that that opposition does not warrant a refusal.

⁷ In the Ipsos poll, 39% of respondents ultimately supported the grant of the variation. In the Metropolis poll, 30% of respondents supported the variation.

⁸ [2009] VCAT 2275, [406]



8. Determination

- 8.1. The Commission is satisfied that, once appropriate conditions are imposed, the grant of a variation in this case will not result in a net detriment to the Monash municipal district. The grant of the application enhances the prospect of the venue undertaking a substantial redevelopment which will provide flow on benefits to the community in the form of additional employment, complimentary expenditure and significantly expanded community contributions. Accordingly, the Commission will grant the variation.
- 8.2. The Commission notes that there are currently 618 egms in the Monash capped region. The regional cap is 623. If the Applicant were to obtain seven additional egms immediately, the cap would be exceeded. The Commission accepts that the Applicant has no intention of breaching the cap and that, as Mr Whitehouse predicted, the number of egms in the capped region is likely to decline in future. The condition agreed to by both the Applicant and the Council that the increase in egms will not take effect until 16 August 2012 effectively addresses the issue.
- 8.3. The administrative process for amending the licence will take place at a time subsequent to this decision, as allowed by section 3.4.20 of the Act.
- 8.4. Amendment of the VOL would not conflict with a Ministerial direction under section 3.2.3 of the Act.

9. Conditions

- 9.1. The major benefits of the variation arise from the proposed renovation of the venue. As the Council pointed out, and the Applicant admitted, it is possible that the renovation will not occur. The renovation is contingent on the Applicant obtaining both planning permission and bank financing.
- 9.2. If the application was granted and the renovation did not proceed, many of the benefits identified would be foregone. In those circumstances, the Commission is satisfied that there would be a net detriment to the community. As such, it is appropriate to impose a condition requiring that the renovations occur in a reasonable timeframe. The Commission notes that the Applicant was amenable to the imposition of such a condition.
- 9.3. There is a question about whether it is necessary to impose a condition requiring the Applicant to make the \$30,000 per annum community grant it has proposed. In the past, the Commission has been reluctant to impose conditions requiring the making of community grants. Notwithstanding that the Applicant in this case has consented to the imposition of such a condition, the Commission has determined not to do so.
- 9.4. During the course of the hearing, the Applicant and the Council reached an agreed set of draft conditions to be imposed if the Commission decided to grant the application. The Commission has reviewed the draft conditions and has determined to impose conditions in the following terms:
 1. Pursuant to section 3.4.20(4) of the Act, the amendment of the venue operator's licence to increase the number of egms permitted at the L'Unico Hotel, Clayton Road, Clayton by 7 additional egms does not take effect until 16 August 2012.
 2. As and from 16 August 2012, the maximum number of egms that may be operated at the premises is a total of 35 egms.



3. If the works to the premises, substantially in accordance with the plans endorsed pursuant to a planning permit issued in relation to application TPA/40027 as lodged with the Monash City Council, are not substantially completed by 16 August 2014 (or such later date agreed to in writing by the Commission) this approval will lapse and the maximum number of egms that may be operated at the premises will revert to 28.
4. The Commission may, upon request by the Applicant, agree to extend the time that the additional 7 machines may be operated at the premises prior to substantial completion of works. That request must be made no later than 30 days prior to 16 August 2014. Any request for an extension of time must include an explanation as to why the works have not been able to be substantially completed.

The preceding document is a true copy of the reasons for the decision of Mr B. Thompson (Chair), Miss G. Owen and Ms K. Hamond.

Mr B. Thompson, Chair

Date of Hearing: 5 and 6 March 2012
Date of Decision: 14 April 2012
Date of Reasons: 9 May 2012
Counsel for the Applicant: Ms Sarah Porritt
Solicitors for the Applicant: Bazzani Scully Brand
Counsel for the Council: Ms Emma Pepler
Solicitors for the Council: Maddocks
Counsel assisting the Commission: Ms Lyn Corneliusen