



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 Montmorency-Eltham RSL Sub-Branch Inc, for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises, the Montmorency RSL, located at 16 Mountain View Road, Montmorency, from thirty-five (35) to fifty (50) gaming machines.

Commissioners: Mr Ross Kennedy, Deputy Chairman
Ms Kate Hamond, Commissioner
Mr Des Powell, Commissioner

Appearances: Louise Hicks of Counsel (instructed by Williams Winter Solicitors)
Theonie Tacticos, Scott Walker and Lisa Raywood for the Responsible Authority (Banyule City Council)
Justin Ghattas as Counsel Assisting the Commission

Date of Hearing: 2 December 2014

Date of Decision: 23 December 2014

Decision: That the application be granted.

Signed:

A handwritten signature in black ink, appearing to read 'Ross Kennedy'.

Ross Kennedy
Deputy Chairman

REASONS FOR DECISION

INTRODUCTION

1. On 26 August 2014, Montmorency-Eltham RSL Sub-Branch Inc (**the Applicant**) applied to amend its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Montmorency RSL (**the Premises**), located at 16 Mountain View Road, Montmorency. The Applicant sought to vary the number of EGMs permitted to be operated at the venue from 35 to 50.
2. The relevant municipal authority is the Banyule City Council (**Council**). Council made a submission addressing the social and economic impact of the application (**the Council submission**) and appeared at the hearing of the Application.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. A venue operator may make a request to the Commission to amend the conditions of a licence under section 3.4.18 of the *Gambling Regulation Act 2003* (**the Act**), including the number of gaming machines permitted to be operated at a venue. Section 3.4.20 of the Act lists matters to which the Commission must have regard in determining an application.
4. Relevantly, section 3.4.20(1)(c) of the Act contains the 'no net detriment test'. This test requires the Commission to weigh the likely positive economic and social impacts of an application against the likely negative economic and social impacts. The test will be satisfied if, following the weighing process, the net economic and social impact of approval on the well-being of the relevant community will be either neutral or positive.¹
5. The Act recognises that gaming on EGMs can cause harm to some communities and to some members of some communities, despite the fact that EGM gaming is a lawful recreational activity when conducted in accordance with the Act. It is for this reason that the Act includes safeguards

¹ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, 435.

to ensure that an appropriate balance is struck between accommodating responsible gambling and minimising the harm caused by problem gambling.²

THE MATERIAL BEFORE THE COMMISSION

6. The Applicant filed the following documents in support of its application:
 - 6.1. a completed application form to increase the number of EGMs at the venue, dated 26 August 2014;
 - 6.2. a social and economic impact assessment report prepared by Mr Nicholas Anderson, NBA Group Pty Ltd, dated 28 August 2014;
 - 6.3. an expenditure report prepared by Mr Michael Clyne, Progressive Venue Services Pty Ltd, dated 27 August 2014;
 - 6.4. a witness statement from Mr William George McKenna, President of the Applicant, dated 29 August 2014; and
 - 6.5. a witness statement from Mr Bennett John Rickwood, General Manager of the Premises, dated 29 August.
7. The Commission also had before it two reports prepared by Commission officers, being:
 - 7.1. a social and economic impact report dated November 2014; and
 - 7.2. a pre-hearing inspection and compliance report dated November 2014.
8. Council also provided the Commission with an economic and social impact submission dated November 2014.

THE CITY OF BANYULE

9. Based on the material before the Commission:
 - 9.1. the Premises is located within the Local Government Area (**LGA**) of the City of Banyule, a metropolitan municipality located approximately

² See *Gambling Regulation Act 2003*, s 1.1(2).

15 kilometres north-east of Melbourne, covering an area of approximately 63 square kilometres;

- 9.2. the City of Banyule (**the City**) comprises two statistical local areas (**SLAs**), Banyule (C) – Heidelberg (**Heidelberg SLA**) and Banyule (C) – North (**Banyule North SLA**). The Premises is located centrally within the Banyule North SLA;
- 9.3. in terms of social and economic disadvantage, the City is ranked as the 67th most disadvantaged of all 79 Victorian LGAs according to its SEIFA ranking.³ Over 75% of the population fall within the 4th and 5th quintiles of disadvantage, suggesting that the level of disadvantage is relatively low in the immediate surrounding area (within 2.5km from the Premises); and.
- 9.4. other economic indicators suggest that Banyule does not have any relative disadvantage - equivalised household income in Banyule is 7.93% higher than the metropolitan average, unemployment in the Banyule is 1.32% lower than the metropolitan average⁴ and the City has an average rank of individuals receiving government pensions and allowances, with the respective SLAs ranking 31st and 32nd of 79 metropolitan SLAs in this indicator.

GAMING EXPENDITURE IN THE CITY OF BANYULE

10. Within the City, 11 gaming venues currently operate 620 EGMs. The Premises is situated within an area subject to a municipal cap, which limits the total number of EGMs permitted to no more than 851.
11. Banyule is generally characterised by higher levels of both gaming expenditure and EGM density when compared with state averages. Based on the material before the Commission:

³ The Socio-Economic Indexes for Areas (**SEIFA**) is a product developed by the Australian Bureau of Statistics which ranks areas in Australia according to their relative socio-economic advantage and disadvantage. The ABS selects indicators such as education, employment, income, families and housing and combines them to provide an index score for each area and ranks all areas in Australia to enable comparison to be made.

⁴ The economic and social impact report prepared by Commission officers stated that the unemployment rate in the City was 8.90%, compared with the 5.97% unemployment rate for Metropolitan Victoria (Department of Employment, Small Area Labour Markets, December Quarter 2013 data).

- 11.1. the City has an EGM density of 6.16 machines per 1,000 adults, the 13th highest of all 31 metropolitan municipalities. This level of EGM density is approximately 9.8% more than the metropolitan average and is 5.2% more than the state average;
- 11.2. gaming expenditure in Banyule for the 2013/14 financial year totalled approximately \$55 million, with an average expenditure per adult of \$547. Expenditure per adult in the City is 4.8% more than the metropolitan average and 0.5% more than the state average. The City's level of average gaming expenditure per adult ranks as the 11th lowest of all metropolitan municipalities with gaming machines; and
- 11.3. trend analysis of gaming expenditure in Banyule indicates that gaming expenditure has decreased by 20.58% in real terms over the past five years, compared with the metropolitan index of 15.90%.

THE MONTMORENCY RSL

12. The Premises opened in 1953 and is located at 16 Mountain View Road, Montmorency, undergoing several renovations and extensions until approximately 1992. In May 1992, the Applicant applied to Council for installation of five EGMs at the Premises. This soon increased to 25 EGMs. In 2001, a major refurbishment of the Premises provided the venue with much its current appearance and configuration.
13. The Premises currently employs approximately 34 hospitality related staff and an RSL 'Veterans Support' team, which comprises a part-time coordinator, a volunteer welfare officer, two appeals officers and a pension officer.
14. The Premises comprises a bistro and dining area, upstairs members bar and function room, memorabilia room, billiards room, outdoor alfresco dining and smoking areas, and a gaming lounge operating 35 EGMs.

Council's Economic and Social Impact Submission

15. The Council submission argued (in summary) that:

- 15.1. the Premises is in a community hub, which is contrary to Council guidelines;
- 15.2. some of the stated 'community benefits' are in fact marketing tools;
- 15.3. machine density is quite high and 'too close' to the 10 EGMs per 1000 adults outlined as part of the statewide cap;
- 15.4. rates of problem gambling are significant in Banyule, with a higher than average proportion of Banyule residents using Gamblers Help North.
- 15.5. assessment of community benefit and harm as undertaken by the Applicant did not allow sufficient time for community input and consultation;
- 15.6. the role of the RSL is described generally but does not provide any specific detail; and
- 15.7. the estimated transferred expenditure of 95% is overly optimistic.

Applicant evidence

Mr William McKenna, President, Montmorency-Eltham RSL Sub-Branch Inc.

- 16. Mr McKenna is the President of the Applicant. He has been a member of the Applicant since the 1970s, a Committee Member since 1982, and President of the Applicant for a total of 19 years.
- 17. Mr McKenna gave evidence about the RSL's current operations in the premises, the community contributions that the Premises currently make, responsible service of gambling (**RSG**) practices and the proposed redevelopment.
- 18. Mr McKenna outlined his commitment to creating a family friendly atmosphere at the Premises, as well as providing enhanced community services to the local area as well as members.

19. Mr McKenna provided the Commission with a chronology of the amalgamation of the Eltham and Montmorency RSLs in late 2010, which resulted in a significant increase in the member base, as well as an increase in the geographic area requiring the community services offered by the Applicant.
20. Mr McKenna provided the Commission with estimated increases to both new and existing employment at the Premises. By increasing the number of EGMs at the Premises, it is the submission of Mr McKenna that the Premises will be able to increase the number of hours of current staff so as to better service the needs of the community generally, as well as assisting senior citizens and members.
21. Mr McKenna outlined the support services that the Applicant offers members and senior citizens, such as medical appointments, transportation, home visits, widow/veterans affairs, and meal vouchers. The Applicant also gratuitously provides food and beverages at funerals/wakes of members.
22. Mr McKenna also provided the Commission with estimates of likely increases to the hours of community services proposed by the Applicant. These services include the provision of ANZAC Day related services, the delivery of school visits and community lectures, transportation of members to medical appointments and hospital visits. Information in relation to the contributions made from the Council-administered trust fund was also provided to the Commission at the hearing of the Application. These contributions totalled approximately \$31,000 and included contributions to several community groups located within the municipality—
 - 22.1. Montmorency Tennis Club - \$1600;
 - 22.2. Lower Plenty Cricket Club - \$1500;
 - 22.3. Heidelberg East Ivanhoe Uniting Church - \$592;
 - 22.4. Montmorency Bowling Club - \$4400;
 - 22.5. Heidelberg Football Club - \$3300;

- 22.6. Hope Springs - \$2200;
 - 22.7. Diamond Valley Food Share - \$2200;
 - 22.8. Olympic Adult Education - \$2200;
 - 22.9. Apollo Parkways Preschool - \$501;
 - 22.10. St Helena Preschool - \$1452;
 - 22.11. North Heidelberg Football Club - \$2000;
 - 22.12. Prostate Cancer Foundation - \$2000; and
 - 22.13. Salvation Army - \$3000.
23. In addition to the aforementioned community services, Mr McKenna outlined the agreement that the Applicant had with Council in relation to contributions of \$1000 per EGM at the Premises. This arrangement involves a contribution by the Applicant to a trust fund administered by Council, of which the funds are then distributed appropriately to community organisations within the municipality.

Proposed Redevelopment

24. Mr McKenna provided the Commission with cost estimates from Billings Long, dated 7 November 2014 (**the Estimates**), in relation to the proposed works that would occur at the Premises should the Commission grant the application to increase the number of EGMs at the Premises.
25. The Estimates provided to the Commission gave a breakdown of the proposed redevelopments and improvements to occur at the Premises. The estimates indicated that the Stage 1 works would total approximately \$1.1 million.
26. Mr McKenna also indicated to the Commission that, insofar as he knew, there was no problem gambling occurring at the Premises, and that the proposed redevelopment would improve the facilities and services that can be offered, thereby reducing any potential for an increase in problem gambling

Mr Bennett Rickwood, Operations Manager, Montmorency RSL

27. Mr Rickwood is the General Manager of the Premises and was previously the Operations Manager of the Greensborough RSL Sub Branch for 13 years. Mr Rickwood gave evidence about the Premises' current operations and employment, membership, gaming, community contributions and RSG practices that occur at the Premises.
28. In a witness statement dated 29 August 2014, Mr Rickwood outlined the member base of the venue, which had grown from 1619 to 1701 between the date of submission and the date of the hearing of the application. Of the 1619 members, 252 are service members, 636 affiliate members, 663 social members, 10 life and associate members, and 58 community members. Approximately 20% of members are over the age of 70.
29. Mr Rickwood submitted that approval of additional EGMs at the Premises would allow the Applicant the opportunity to undertake a significant redevelopment and is "vital to the RSL's continued existence". He confirmed the main benefit of the new machines was in fact the taxation benefit that the Premises would enjoy, which would alleviate financial pressure and allow for greater community contributions to be made.
30. Mr Rickwood described his role as very "hands-on", with his duties and responsibilities involving a variety of areas of operation at the Premises, ranging from staffing the Premises to liaising with the Committee.
31. Mr Rickwood described some changes that would occur at the Premises if the Commission were to grant the application to increase the number of EGMs. In particular, Mr Rickwood indicated that a screen would be installed to obscure the line-of-sight to the gaming room and EGMs from the majority of seating within the dining area.
32. Mr Rickwood also indicated that employment at the Premises would increase and he intends to employ up to four full-time-equivalent positions if the application were granted, which would allow for a greater level of services deliverable to the community.

33. Mr Rickwood indicated that the Premises are used as a site for responsible gaming promotions and that the Premises undertake regular training in relation to RSG and Code of Conduct, as well as performing annual audits of the training undertaken by staff.
34. In relation to community contributions and benefits emanating from approval of the Application, Mr Rickwood reiterated the evidence of Mr McKenna, with a focus on assisting members of the Applicant in general day-to-day affairs, which may include medical appointments, social and leisure activities, and transportation. Mr Rickwood also indicated that the Premises had a significant involvement in sporting and community groups which was well supported by the ongoing operation of the trust fund administered by Council to community and sporting groups in Banyule.

Mr Michael Clyne, PVS Australia Pty Ltd (Expenditure Report)

35. The Applicant engaged Mr Clyne of PVS Australia to provide an estimate of the gaming expenditure expected to be generated by the proposed additional 15 EGMs at the Premises.
36. Mr Clyne provided the Commission with a report to address the matters raised by Council in its submission. Mr Clyne's report stated that he estimates, in accordance with outputs predicted by the Geotech model⁵, that:
- 36.1. an additional 15 EGMs at the Premises would increase the gross gaming expenditure at the Premises by \$653,655 in the first twelve months of operation;
 - 36.2. of this additional expenditure, 95% is expected to be expenditure transferred from surrounding venues; and
 - 36.3. after transferred expenditure is taken into account, total new gaming expenditure in the City is expected to rise \$30,702 in the first year of operation (or 0.34% of the total 2012/2013 financial year gaming expenditure in the City).

⁵ The Geotech Model is a geo-spatial model designed to provide predictions of gaming revenue from EGMs.

37. Mr Clyne submitted that the attractiveness of the Premises will not be impacted by proposed renovations or improvements. Instead, it is the view of Mr Clyne that the increase in EGM access and game variety/type will have a more substantial impact on the attractiveness of the venue for gaming.
38. Mr Clyne submitted that the gaming industry considers 50 EGMs to be an optimum number in a venue so as to allow for a satisfactory mixture of game types and denominations, which increases the attractiveness of the venue to patrons by virtue of the greater range of choice.
39. Mr Clyne stated that the Premises is, by virtue of its unusual location, a destination venue. He suggested that patrons who partake in gaming at the Premises would make the conscious choice to travel to the Premises to do so.
40. By increasing the number of EGMs, and thus improving the attractiveness of the Premises, Mr Clyne submits that the Premises will leverage itself into a more competitive position against other gaming venues in the local area.
41. In summary, Mr Clyne submitted that the increase in expenditure will be almost entirely transferred from other venues, resulting in an increase in new expenditure of approximately \$30,000 per annum.

Mr Nicholas Anderson, NBA Group Pty Ltd (Social and Economic Impact)

42. Mr Anderson gave evidence about the expected social and economic impact the application may have on the City of Banyule.
43. Mr Anderson told the Commission that, as a whole, compared with metropolitan averages Banyule does not experience a significant level of disadvantage, as noted by the high SEIFA ranking of 13 of 79 metropolitan LGAs.
44. Mr Anderson explained that the Premises' location is not "overly convenient" and believes most people would travel to the Premises as a destination venue. This is supported by surveys undertaken of patronage in the gaming room between 8 February 2014 and 5 March 2014, where no periods of peak utilisation occurred. A secondary survey was also conducted between 6 April

2014 and 29 July 2014, which revealed one instance of peak utilisation (greater than 70% of EGMs in use), with the exception of Anzac Day, which for the purposes of the survey is considered an outlier. In the view of Mr Anderson, these surveys suggest that utilisation of EGMs in the gaming room is currently quite low, and as such, the installation of any additional EGMs would have a negligible impact on peak utilisation of EGMs at the Premises.

45. Mr Anderson was also of the view that peak times for gaming machine utilisation occurred after dinner or lunch periods, meaning that, in Mr Anderson's view, the gaming room is utilised in conjunction with the bistro.
46. Mr Anderson therefore concluded that the impact on problem gambling in this application would be small. Mr Anderson explained that the proposal does not create a new venue, that the venue already offers access to gaming machines and that gaming is one part of a wider range of recreational facilities at the venue.
47. Mr Anderson outlined the planned future community contributions that would occur should the Commission grant the application to increase the number of EGMs at the Premises. The benefits provided to the community in terms of tangible items, such as a second bus to transport members and veterans to and from appointments, as well as the increase in community contributions by \$15,000 by virtue of the operation of the Council administered trust fund, are of significant benefit. Mr Anderson also outlined the use of offices and function spaces at the Premises as a significant community benefit to Banyule.
48. Mr Anderson indicated that work done by the RSL, particularly in regards to the work and support provided for the elderly and community groups, as well as the planned capital works to increase the capacity to support these groups, would be expanded, would not be detrimental to the community and would, in fact, have a positive impact on both the local community generally, as well as vulnerable groups such as the elderly and veterans.
49. Mr Anderson suggested that any increase in problem gambling would be "minimal" – if at all – and that the benefits resulting from the proposal,

including the improvements to the venue and continued support to community groups, would far outweigh the potential negative impacts of the proposal.

50. Mr Anderson's report summarised the potential social and economic benefits of the application as:

50.1. economic and social benefits resulting from increased recreational gambling expenditure and enhanced access to gaming facilities for recreational players;

50.2. economic benefits from increased contributions to the trust fund, which would total \$50,000 per annum;

50.3. economic stimulus resulting from the development works and social benefits resulting from the improved facilities for the community (such as the enhanced bistro area and the ability for community groups to utilise the proposed conference/function areas);

50.4. economic benefits stemming from increased employment.

51. Mr Anderson considered that the predominant economic and social disbenefits resulting from the application would be the potential impacts resulting from problem gambling, in that the share of new gaming expenditure derived from problem gamblers is an economic and social disbenefit. However, Mr Anderson considered that this will be minimal as it is unlikely to increase any existing problems, given that the application proposes to increase EGMs in an existing venue with strong RSG practices.

Council evidence

Ms Theonie Tacticos and Mr Scott Walker, Banyule City Council

52. Ms Tacticos acted for Council at the hearing of the application. Council submitted a Social and Economic Impact Assessment, dated November 2014 (**Council SEIA**), prior to the hearing of the Application.

53. Ms Tacticos put forward the view of Council that the application had been a surprise to Council, and expressed disappointment at the lack of robust

community consultation prior to the application being made to the Commission.

54. Mr Walker expressed that there had been significant dialogue between Council and Mr McKenna in relation to the RSL's desire to increase the number of EGMs at the venue. It was the submission of Mr Walker that Council had not formed a view as to the application as it had not undertaken the necessary community consultation, and had been caught somewhat unaware by the decision of the RSL to apply to the Commission for the current increase.
55. Ms Tacticos outlined the concerns of Council in relation to planning matters, such as car parking and safety to the community as a result of increased traffic in the area immediately surrounding the Premises, which is also used by sporting and community groups.
56. In the Council SEIA, Council challenge the benefits that the Applicant claims. In summary –
 - 56.1. Insufficient assessment of community benefits and harms;
 - 56.2. Insufficient detail provided of community benefits, as well as suggesting that some proposed benefits were, in fact, simply marketing tools for the RSL;
 - 56.3. The idea of “taking money from the community to serve the community better” is contradictory;
 - 56.4. Transferred expenditure of 95% from other venues is overly optimistic; and
 - 56.5. The increase of 15 EGMs will generate more loss per machine than was the case at the Heidelberg RSL (approximately \$43,000 compared to \$14,000).

FINDINGS BY THE COMMISSION

Social Impacts

57. The primary social detriment relevant to this application is the possibility of an increase in problem gambling. The Commission accepts that increased access to EGMs can increase the risk of problem gambling in a community.
58. The Commission has closely considered the demographic characteristics of the LGA and the Premises patron catchment. The Commission notes that the municipality is relatively advantaged, with the SEIFA data indicating that no part of the local population fall within the first, and most disadvantaged, quintile on the SEIFA scale for disadvantage.
59. The Commission is satisfied that the Premises has strong RSG practices and procedures in place and there is little evidence to suggest that the Premises is a venue characterised by problem gambling. The Premises also appears to generally have a strong relationship with Council.
60. Further, the proposed renovations expand other areas of the venue (including the bistro and adjoining lounges and entertainment areas) which will assist in reducing the focus on gaming at the Premises and improve the amenity of the venue for patrons. These factors, collectively, reduce the risk of an increase in problem gambling at the Premises.
61. The Premises is not located within a strip shopping centre, is a destination venue and is unlikely to draw passing pedestrians as patrons and, therefore, “convenience” gambling opportunities. To the extent that problem gambling already exists in Banyule, the Commission considers that it is unlikely it will be significantly exacerbated by the addition of 15 EGMs at this venue.
62. The Commission considers that there are other social benefits in connection with this application. The proposed renovations will allow the venue to offer separate function and conference areas to community groups and enable dining facilities to be expanded.
63. The Commission does not consider there will be a significant increase in the risk of problem gambling occurring at the venue and believes there are social benefits in connection with the application which offset any such increase.

Economic Impacts

64. The Commission notes that there are economic benefits relevant to this application. The likely increased machine choice and reduction in wait times for recreational gamblers and increased gaming expenditure resulting from recreational gambling are considered to be slightly positive economic benefits.
65. The Commission notes that the associated renovation works at an estimated cost of \$1.1 million and associated building and maintenance expenditure as well as supply contracts will provide an economic stimulus to the local economy, all of which are beneficial.
66. Additionally, the proposed increase in community contributions is also an economic benefit, particularly as it represents a significant increase to the Premises' existing contributions.
67. The Commission agrees with Council's argument that gaming expenditure attributed to problem gambling may have a negative economic impact. However, the Commission considers that, for the reasons outlined above, there is not a significant risk of an increase in problem gambling if this application were granted and therefore any increased expenditure attributable to problem gambling will similarly be small.
68. The Commission is of a view that the economic impact of this application, based on the evidence before it, is slightly positive.

CONCLUSION

69. The Commission considers that the likely social and economic impacts of this application will be slightly positive. As such, the Commission considers that the net economic and social impact of approving this application will not be detrimental to the well-being of the community of Banyule, and accordingly grants the application.

The preceding sixty-nine (69) paragraphs are a true copy of the Reasons for Decision of Mr Ross Kennedy (Deputy Chairman) and Ms Kate Hamond (Commissioner) and Mr Des Powell (Commissioner).