



Victorian Commission for  
Gambling and Liquor Regulation

**REASONS FOR DECISION**

In the matter of an application by Rhetro Pty Ltd under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* for amendment of its gaming venue operator licence to vary the number of Electronic Gaming Machines permitted at the approved premises, the Birallee Tavern, 97-99 Melrose Drive, Wodonga, from 24 to 30.

**Commission:**

Mr Mark Brennan, Chair  
Mr Des Powell, Commissioner

**Appearances:**

Mr John Larkins of Counsel for the Applicant  
(instructed by Ryan Commercial Lawyers)

Mr Bronte Campbell as Counsel Assisting the Commission

**Decision:**

That the application be granted

**Signed:**

**Mr Mark Brennan**  
Chair



## REASONS FOR DECISION

### BACKGROUND

1. This is an application by Rhetro Pty Ltd (**Applicant**) for amendment of its gaming venue operator licence to vary the number of electronic gaming machines (**EGMs**) permitted at the approved premises, the Birallee Tavern, situated at 97-99 Melrose Drive, Wodonga (**Premises**) from 24 to 30.
2. The relevant municipal council in respect of this application is the City of Wodonga (**Council**). On 20 April 2012, the Council provided the Commission with a submission in respect of this application. The Council later withdrew that submission and was not represented at the hearing of the application.

### THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. Determination of this application is governed by section 3.4.20(1)(c) of the Gambling Regulation Act 2003 (**the Act**) which states that the Commission must not amend a venue operator's licence unless the Commission is satisfied that:
  - 3.1. amendment of the licence does not conflict with a Ministerial Direction given under section 3.2.3 of the Act;
  - 3.2. the regional limit or municipal limit for EGMs in the region or municipal district in which the venue is located will not be exceeded by the making of the amendment; and
  - 3.3. 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.
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>1</sup>

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



5. The Act recognises that, notwithstanding individual rights of self-determination and gaming's recreational legitimacy, gaming on EGMs causes harm to some communities and some members of some communities.<sup>2</sup> It is for this reason that the Act includes safeguards to ensure that an appropriate balance is struck between a lawful and legitimate recreational activity for some and harm for others.

## THE BIRALLEE TAVERN AND THE WODONGA MUNICIPALITY

6. The City of Wodonga (**Wodonga**) is located approximately 300 kilometres north-east of Melbourne on the Victoria-New South Wales border. Wodonga has an adult population of 28,012, making it the 7<sup>th</sup> highest adult population of the 13 regional municipalities in Victoria.
7. Wodonga is subject to a municipal limit of 259 EGMs. At the time of the hearing of this application, 184 EGMs were operating in Wodonga. On 2 April 2012, the Commission granted an application by Wodonga Holdings Pty Ltd to increase the number of EGMs at the Blazing Stump Hotel in Wodonga from 20 to 40. On 7 May 2012, the Commission granted an application by Café de Biere – Biere Haus Pty Ltd for approval of the premises, the St Ives Biere Café, as suitable for gaming with 30 EGMs. Therefore, granting of this application will result in 240 EGMs being approved in venues in Wodonga.
8. Wodonga has one statistical local area<sup>3</sup> and four gaming venues within the municipality. Wodonga has a low density of EGMs and a low average expenditure per EGM located in the municipality. Notably, the average expenditure per adult in Wodonga is 54% less than the regional average. When taking the anticipated expenditure as a result of the two recent EGM approvals in the municipality into account, Wodonga's total EGM expenditure is predicted to be 52% less than the regional average in the 2011-12 financial year.
9. Wodonga's gaming statistics should be interpreted with the nearby city of Albury in New South Wales in mind. Wodonga faces considerable gaming competition from Albury where there are two dominant clubs operating, between them, over 720 EGMs and 3 hotels operating approximately 60 EGMs.

<sup>2</sup> See: s 1.1(2) of the Act.

<sup>3</sup> A group of one or more *Census* Collection Districts



10. The material before the Commission showed that the municipality is marginally socially and economically advantaged. Wodonga is ranked 20 of 41 Regional Statistical Local Areas on the Social and Economic Index for Local Areas (**SEIFA**) for Disadvantage indicating a mid-range level of disadvantage in the area. When broken down into a Census Collection District level, the material before the Commission showed that the Premises is located in an area that exhibits strong signs of disadvantage.
11. The Premises is located within the Birallee precinct in West Wodonga which includes a range of retail, commercial and sporting facilities. The Premises consists of a bistro, two bars, function area, children's entertainment area, TAB facilities, outdoor entertaining areas and a gaming room with 24 EGMs.

#### **THE MATERIAL BEFORE THE COMMISSION**

12. The Applicant filed with the Commission the following material in support of its application:
  - a) Social and Economic Impact Statement prepared by EDM Group dated June 2012;
  - b) Proposed floor plans of the Premises showing the installation of the 6 additional EGMs; and
  - c) Expenditure Report prepared by Michael Clyne dated 29 May 2012.
13. A statistical report prepared by Commission officers, titled "Economic and Social Impact Report" and dated April 2012, was also considered by the Commission.

#### ***Evidence of likely expenditure***

14. The Applicant called Mr Michael Clyne to give evidence as to the likely EGM expenditure which would result from the proposed increase in EGMs at the Premises.
15. Mr Clyne predicted that the total increased gaming expenditure at the conclusion of the first 12 months of trade following the introduction of an additional 6 EGMs would be \$26,931.
16. Mr Clyne estimated that approximately 50% of the increased expenditure would be transferred from other gaming venues within the municipality. Mr Clyne told the Commission that the transferred expenditure did not include any expenditure that would be clawed back from Albury. Mr Clyne told the Commission that it was difficult to predict the amount of expenditure



that would be transferred from Albury as a result of approval of this application, but anticipated that there would be some additional transfer from Albury.

17. Mr Clyne therefore estimated that the total net impact on gaming expenditure within Wodonga would be an increase in total expenditure in the first 12 months of trade of \$13,465, representing a 0.16% increase in expenditure in the municipality.
18. Mr Clyne noted that at first consideration, the anticipated return to the venue from such a small increase in expenditure may not warrant the effort and cost of installing the additional EGMs. However, Mr Clyne noted that the Applicant will benefit from the installation of the additional EGMs through an increase in competitiveness against other venues and a reduction in annual tax rate of approximately \$70,000,
19. The Commission accepts Mr Clyne's expenditure prediction as reasonable.

#### ***Evidence of Mr Doolan***

20. The Applicant called Mr Thomas Paul Doolan to give evidence at the hearing of the application. Mr Doolan is a director of the Applicant and describes himself as a hotelier and property developer. Mr Doolan has had extensive experience in the hospitality industry including being the proprietor of the Termo Hotel in Albury and the Premises.
21. Mr Doolan told the Commission that he and his wife built the Premises from the ground up in 1994. Mr Doolan gave evidence that when the Premises opened, it was the first major facility in the Birallee precinct and was a focal point for the community.
22. Mr Doolan told the Commission that the Premises has always been a community hotel and provides financial and in-kind support to local sporting and community groups. Mr Doolan estimated that the Applicant provides \$50,000 per annum in community contributions to local community and sporting groups. Should this application be granted, Mr Doolan told the Commission that the Applicant would increase this amount to \$80,000 annually.
23. Mr Doolan told the Commission that he sold the leasehold to the Premises in 2003 and repurchased the leasehold through the Applicant in 2009 after witnessing considerable deterioration in the venue's quality. Since repurchasing the leasehold, the Applicant has invested over \$450,000 in renovating the Premises and returning it to its former glory while retaining the community focus. Mr Doolan told the Commission that the Applicant has planned further renovations to the Premises including the refurbishment of the venue's function and smoking areas. However, Mr Doolan told the Commission that those renovations were contingent on approval of this application.



### ***Evidence of Mr Stewart***

24. The Applicant called Mr Ben Stewart to give evidence at the hearing of the application. Mr Stewart is the liquor licensee of the Birallee Tavern and a unit holder of the Applicant. Mr Stewart is responsible for the implementation and operation of responsible service of gaming and alcohol policies in the Premises.
25. Mr Stewart told the Commission that the Applicant is committed to being a responsible service of gaming provider. Mr Stewart gave evidence that the Applicant works in conjunction with the Gateway Community Health Organisation to ensure that the venue is up to date with the latest responsible gaming strategies.
26. Mr Stewart told the Commission that, twice a year, the Applicant has a full staff meeting where representatives from Gateway Community Health are present to discuss developments in the gaming industry and how best the venue can minimise problem gaming related harm. Mr Stewart also told the Commission that the Applicant is a participant in the Australian Hotels Association self-exclusion program and has an online facility that ensures that the self-exclusion register is up to date at all times.

### ***Social and Economic Impact Statement – EDM Group***

27. The Applicant engaged EDM Group (**EDM**) to prepare a social and economic impact statement to support its application. Mr Peter O'Dwyer, a director of EDM and the author of the impact statement, was called by the Applicant to give evidence.
28. Mr O'Dwyer gave evidence that the SS&A Wodonga Club, which is currently permitted to operate 60 EGMs, has removed all gaming facilities from the venue and offered its EGM entitlements purchased at the 2010 EGM Entitlements Auction up for sale. Mr O'Dwyer told the Commission that the SS&A Wodonga Club would not be reinstating gaming in their venue. Accordingly, from August 2012, when the results of the 2010 EGM Entitlements Auction come into effect and assuming this application will be approved, there will be 180 EGMs operating within the municipality. Mr O'Dwyer noted that this is 4 less EGMs than are currently operating within the municipality.
29. Mr O'Dwyer told the Commission that, since 2001, Wodonga has improved significantly in terms of socioeconomic disadvantage and noted the municipality's SEIFA score of 982 in 2001 compared with a SEIFA score of 993 in 2006. Mr O'Dwyer anticipates that when 2011 Census statistics are released, those statistics will show that the socioeconomic conditions in Wodonga have continued to improve over the last five years.



30. In terms of problem gaming, Mr O'Dwyer is of the opinion that approval of this application would not increase the incidences of problem gaming in the municipality due to Wodonga's mature gaming market and the small number of EGMs at the Premises. Mr O'Dwyer told the Commission that Wodonga has been exposed to large numbers of EGMs through its proximity to Albury for a long time.
31. In Mr O'Dwyer's opinion, patrons do not come to the Premises to use the EGMs, they come for other reasons such as to dine, socialise or for a function. Mr O'Dwyer told the Commission that if a person wanted to go to a venue for the primary purpose of gaming, it is likely that they would go to another venue with a greater EGM offering or across the border to Albury.
32. Mr O'Dwyer told the Commission that, in his opinion, the Premises shared characteristics of both a destination and convenience venue. The Premises is in close proximity to the Centro Wodonga Shopping Centre and Wodonga Sports & Leisure Centre. However, the Premises is located on the Hume Freeway and the majority of its patrons would be required to drive to the venue by car, and as such, would be making a conscious decision to go to the venue as a destination rather than out of convenience.
33. In Mr O'Dwyer's opinion, the granting of this application would result in a net economic and social benefit to local community and the Wodonga municipality.

## FINDING

34. On balance, the Commission is satisfied that a variation of the venue operator's licence to permit an additional 6 EGMs to be operated at the Premises will not result in a net economic and social detriment to the community of the municipal district.
35. An increase in EGMs in a venue brings with it an inherent risk of an increase in problem gambling. However, the Commission is satisfied that any risk of an increase in problem gambling is mitigated by the density of EGMs within the region. Where the local population readily has access to a large number of EGMs, it is unlikely that an additional 6 EGMs in this venue will materially increase the risk of problem gambling in the area.
36. This risk is further mitigated by the Applicant's adequate responsible service of gaming policies. Accordingly, the Commission is satisfied that the risk of an increase in problem gambling as a result of approval of this application is negligible.
37. The Commission accepts that this proposal will result in an increase in gaming expenditure of approximately \$13,465 per annum. While an increase in expenditure brings with it an



economic stimulus to the municipality, this stimulus can be negated where problem gambling is increased. The Commission notes that problem gambling causes a loss of productivity and an increase in health and social issues. The Commission accepts that the risk of an increase in problem gambling as a result of approval of this application is minimal, and as such, concludes that the increase in expenditure will have a marginal positive economic impact on the community.

38. The granting of this application will provide the Club with an increased revenue stream that will allow it to increase its support to community groups and continue to renovate the Premises. The Commission considers the principal social and economic benefit of this application is an increase of \$30,000 per annum in support to local community and sporting groups.
39. The Commission is satisfied that the granting of this application will not result in the municipal limit on EGMs within Wodonga being exceeded and amendment of the venue operator's licence does not conflict with a direction given under section 3.2.3 of the Act. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the application.

*The proceeding 39 paragraphs are a true copy of the reasons for decision herein of –*

Mr M. Brennan, Chairman  
Mr D. Powell, Commissioner

<i>Date of Hearing:</i>	6 June 2012
<i>Date of Decision:</i>	11 July 2012
<i>Date of Reasons for Decision:</i>	11 July 2012
<i>Counsel for the Applicant:</i>	Mr J. Larkins
<i>Instructing Solicitors:</i>	Ryan Commercial Lawyers
<i>Counsel Assisting the Commission:</i>	Mr B. Campbell