



Victorian Commission for Gambling and Liquor Regulation

REASONS FOR DECISION

In the matter of an application by Hogan's Hotel 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 Hogan's Hotel, located at 92 High Street, Wallan, from 30 to 45.

Commission:

Mark Brennan, Chair
Gail Owen, Deputy Chair
Robert Kerr, Commissioner

Decision:

That the application be granted

Date of Reasons:

26 June 2012

Signed:

Mark Brennan
Chair

REASONS FOR DECISION

BACKGROUND

1. This is an application by Hogan's Hotel Pty Ltd (the **Applicant**) to vary the number of Electronic Gaming Machines (**EGMs**) permitted at the approved premises, Hogan's Hotel, situated at 92 High Street, Wallan (the **Hotel**) from 30 to 45.
2. The relevant municipal council in respect of this application is the Shire of Mitchell (**the responsible authority**). The responsible authority objected to the variation and prepared a written submission to the Commission.

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:
 - i. amendment of the licence does not conflict with a Ministerial Direction given under section 3.2.3 of the Act;
 - ii. 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
 - iii. 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. Section 3.4.19(1) of the Act gives the municipal authority in which the applicant's venue is located the right to make a submission to the Commission:
 - i. addressing the economic and social impact of the proposed amendment on the well-being of the community of the municipal district in which the approved venue is located; and
 - ii. taking into account the impact of the proposed amendment on surrounding municipal districts.
5. The no net detriment 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 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.¹

6. 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.² 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 MATERIAL BEFORE THE COMMISSION

7. The Applicant filed the following documents in support of its application:
 - i. Social and Economic Impact Statement prepared by Rhys Quick of Urbis Pty Ltd dated 23 December 2011;
 - ii. Report in Respect of Application by Hogan's Hotel (Gaming Expenditure Estimate) prepared by Moore Stephens Melbourne (Tim Stillwell), dated December 2011;
 - iii. Witness Statement of James Anthony Hogan, Owner of Hogan's Hotel, dated 20 December 2011;
 - iv. Witness Statement of Darren Freestone, Venue Manager of Hogan's Hotel, dated 26 March 2012; and
 - v. Economic and Social Impact Submission Form, Mitchell Shire Council dated 8 March 2012;
 - vi. Letter from Mr Robert Gordon, undated, received by the Commission on 31 March 2012 via email.
8. The Commission held a public inquiry to consider the application pursuant to section 28(2)(g)(iii) of the *Victorian Commission for Gambling and Liquor Regulation Act* 2011 on 4 April 2012. While responsible authority provided the Commission with a written submission it did not appear before the Commission at the public inquiry.
9. Additionally, a statistical report prepared by Commission officers, titled Economic and Social Impact Report, dated March 2012 was considered by the Commission.

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

² See: s 1.1(2) of the Act.

³ *Romsey* (2008) 19 VR 422, 435

Economic and Social Evidence

10. The Hotel is located at 92 High Street, Wallan. The Hotel is located within a rural Local Government of Area (LGA) of the Shire of Mitchell. There are 5 gaming venues within the LGA. The Hotel is not located within a capped region and therefore, is not subject to a municipal limit.
11. The Shire of Mitchell is divided into two statistical local areas (SLAs) - Mitchell-South and Mitchell-North. The Hotel is located in Mitchell-South, and is one of three gaming venues within the SLA.
12. The Shire of Mitchell is located approximately 80 kilometres north of Melbourne, with an adult population of 26,843. The annual rate of population growth projected by the Department of Planning and Community Development is 2.5% over the next four years. This is significantly faster than the Victorian average. Mitchell-South is ranked 16 out of the 84 rural SLAs (with 84 being the most disadvantaged) on the Social and Economic Index For Local Areas (SEIFA) indicating a lower level of disadvantage in the Mitchell-South area compared to other rural SLAs.
13. Unemployment in the Mitchell-South SLA is 4.63%, higher than the unemployment rate for rural Victoria (4.36%).
14. The Applicant called Mr Rhys Quick of Urbis to give evidence regarding the social and economic impact on the Shire of Mitchell and the surrounding area should the application be granted.
15. Mr Quick noted that one of the key factors in this application was the forecast growth in the population growth rates, particularly in Mitchell-South. Since 1996 the population growth rate in Mitchell-South has been above 3% per annum, which is significantly higher than the country Victoria average, and the Melbourne average. This is the result of the development of numerous residential estates, and the forecast growth over the next 5 years is at 3.7%, or almost 1,000 people per annum. Mr Quick told the Commission that the Council has now submitted that Wallan should be included in the urban growth boundary for Melbourne, which recognises the strong growth in this area over the past few years. Further, he stated that the population was "quality growth", meaning that it was attracting people with high incomes who showed very few signs of disadvantage.
16. Currently the hotel venue consists of a bistro, children's play room, a café, sports

bar, TAB bar, Saloon Bar, drive-through bottle shop and a gaming lounge with 30 EGMs.

17. The Hotel is proposing to further update its facilities. These works include refurbishments and extensions to most of the areas and rooms of the Hotel. Mr Quick told the Commission that this redevelopment would result in significant employment opportunities including a total 12 full-time equivalent employees. Further, Mr Quick noted that the increase in the number of EGMs would assist the applicant in funding this work, and thereby increasing its offering to the local community.

18. In concluding that the additional 15 EGMs, on balance, will not result in a net economic and social detrimental to the Shire of Mitchell, Mr Quick noted the following factors:

- i. The Hotel provides the community with food, entertainment and function facilities within Wallan. For example, the function room is used by locals and community organisations for celebrations, events and meetings.
- ii. The Hotel contributes close to \$20,000 to the community through both cash donations and in kind contributions.
- iii. If the application for additional EGMs is granted, the anticipated revenue will allow for further works at the Hotel at a cost of over \$2 million. This will create local economic benefits including additional jobs.

19. Overall, Mr Quick considered that the additional machines would not have a detrimental effect on problem gambling within the Shire of Mitchell. This belief was due to various factors, including that:

- i. access to gaming opportunities would not change (as an increase in EGMs would not result in an increase in gaming venues);
- ii. Wallan is an established gaming market, and further strong population growth will drive demand for additional facilities;
- iii. the residential area surrounding the venue is not particularly disadvantaged; and
- iv. the policies and procedures put in place by the Hotel will help to prevent problem gambling and minimise harm to the community.

20. The responsible authority submitted that the Shire of Mitchell has a higher average ratio (7.19) of EGMs per 1,000 adults when compared to the average of rural

Victoria (6.52) and the overall Victorian average (6.19). The responsible authority has adopted a gaming policy that it will oppose any increase in the number of EGMs until the Shire of Mitchell average reduces to that of rural Victoria on the basis that the Shire is currently over serviced by EGMs. To obtain this average, the Shire would need an increase of 2,745 in adult population with no increase in the number of EGMs. However, the responsible authority did submit that if the applicant proposed to move the 15 existing EGMs from within the Shire of Mitchell from a lower social economic area to Wallan it would not oppose the application. In this context, the Commission notes that the Applicant was not in a position to indicate the proposed source of the EGMs.

21. The responsible authority further submitted that there would be no economic benefit as a consequence of this application because:

- i. supply contracts would not increase;
- ii. there was no complementary expenditures; and
- iii. there was no tourism expenditure.

22. As the responsible authority did not appear at the public inquiry the Applicant was not able to test these submissions by cross examination.

Evidence of Likely Expenditure

23. The Applicant called Mr Tim Stillwell to give evidence as to the likely EGM expenditure which would result from the proposed increase in EGMs at the Hotel.

24. On the basis of an analysis of the recent trend in gaming expenditure in the Shire of Mitchell, Mr Stillwell concluded that the level of additional gross gaming expenditure generated from an additional 15 EGM's at the Hotel would be between \$161,513 to \$240,900 per annum.

25. Mr Stillwell estimated that between 10% to 14% of the additional gross gaming expenditure would be transferred expenditure. While Mr Stillwell acknowledged that this was a conservative estimate, he noted that there were no other gaming venues within 10kms of the Hotel. The estimated transferred expenditure is predicted to come from two gaming venues within a 15km radius of the Hotel.

26. Mr Stillwell therefore estimated that the total net impact on gaming expenditure in first 12 months of trade would be between \$137,286 and \$216,810.

Evidence from the Hotel

27. The Applicant called Mr James Hogan, freehold owner of the Hotel, to give evidence regarding the redevelopment plans and the management and general practices of the Hotel.
28. Mr Hogan stated that since 2005 the Hotel has had a gaming room with 30 EGMs. He told the Commission that the Hotel had undergone an extensive renovation in 2001 and further renovations were undertaken in 2006, including the commencement of a 24 room motel which is still under construction. Mr Hogan confirmed there was no direct access or line of sight between the children's play area and the gaming room and that this would not alter.
29. Mr Hogan indicated that if the application were granted the increase in revenue would allow extensions to many areas in the hotel including the bistro, children's play area, kitchen, salon bar, and a new TAB/Sports area. This redevelopment will result in an estimate of an additional 12 full time employees. Mr Hogan stated he predominantly employed local residents.
30. Mr Hogan stated that the Hotel supports local groups by providing approximately \$20,000 per annum in cash donations. He also told the Commission that the Hotel provides local sporting bodies with a free function room. The Hotel offers a loyalty card on which patrons can accumulate points and the Hotel offers patrons free meals on their birthday and/or anniversaries. While Mr Hogan accepted that the loyalty card was also a marketing tool, he considered that it also provided a community benefit.
31. Mr Hogan told the Commission that the Hotel adopts rigid responsible service of gaming practices and that the promotion of harm minimisation is non-negotiable. Mr Hogan stated that his gaming manager met with the local government gamblers' help representative to assist in the Hotel's compliance with responsible service of gambling, and that the local council attends the Hotel on a regular basis. While the Hotel has not adjusted any of its current procedures and approaches towards responsible gambling from these interactions, Mr Hogan asserted that he always takes a proactive approach to compliance.
32. The Applicant submitted written evidence from Mr Darren Freestone, the venue manager of the Hotel. Mr Freestone said that, from his experience, the venue does not attract many problem gamblers. However, he did note one instance

where a family member had approached him concerning a relative's gambling habits. In Mr Freestone's written evidence, he stated that he had been responsible for facilitating a venue support program between Mitchell Community health and the Hotel. This program sought to provide support to the Hotel staff by dealing with regulatory and compliance issues, including information relating to problem gambling patrons. Mr Freestone felt that all his staff fully embraced this program.

FINDING BY THE COMMISSION

33. The no net detriment test in section 3.3.4(1)(c) of the Act 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 of any likely impacts, the Commission is satisfied that the net economic and social impact of approval on the well-being of the relevant community will be either neutral or positive³.
34. On balance, the Commission is satisfied that a variation of the venue operator's licence to permit an additional 15 EGMs to be operated at the Hotel will not result in a net economic and social detriment to the community of the Shire of Mitchell.
35. The Commission notes the opposition to the increase in EGMs from the responsible authority. However, it considers that the basis for this objection is only a temporary concern. The Commission accepts the evidence of the applicant that the Hotel is located in an area of recent strong population growth, and that this growth is projected to continue over the next 4 years due to the number of housing developments in Wallan and the Hidden Valley. Therefore, the projected growth in population will absorb the increase in gaming expenditure that should alleviate the responsible authority's concerns arising from the current higher than average ratio of EGMs per adult.
36. While the Commission accepts that an increase in EGMs in a venue brings with it an inherent risk of an increase in problem gambling, the Commission notes the local population has had easy access to EGMs for over 7 years and it is unlikely that an additional 15 EGMs in this venue will materially increase the risk of problem gambling in the area. Further, gaming expenditure has declined in real terms over the past five years in the Shire of Mitchell. The Commission notes that this decline is expected to continue. The risk of problem gambling is further

mitigated by the Applicant's 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 low.

37. The Commission accepts that one of the positive economic benefits of granting this application will be that the Hotel can complete a further redevelopment of the venue. The redevelopment will allow for an increase in employment at the venue, through the enhancement of the Hotel which will offer its patrons a better overall service.
38. The Commission accepts that this proposal will result in an increase in gaming expenditure of around \$216,810 per annum. While the Commission accepts that there is a small risk of an increase in problem gambling, this risk is outweighed by the positive social impacts the increased revenue will have on the community, especially those in the community who benefit from the services offered by the Hotel. Upon this application being granted, and in addition to the redevelopment, the Hotel will be able to continue to make financial and in kind contributions to the value of \$20,000 per annum to local sporting bodies. The Commission considers this to be an economic and social benefit of this application.
39. An amendment of this venue operator's licence does not conflict with a direction given under section 3.2.3 of the Act.
40. The administrative process of amending the licence will take place at a time subsequent to this decision as allowed by section 3.4.20 of the Act.

The preceding document is a true copy of the Reasons for Decision of Mr Mark Brennan (Chairperson), Ms Gail Owen and Mr Robert Kerr.

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| <i>Date of Inquiry:</i> | <i>4 April 2012</i> |
| <i>Date of Decision:</i> | <i>8 May 2012</i> |
| <i>Date of Reasons:</i> | <i>26 June 2012</i> |
| <i>Counsel for the Applicant:</i> | <i>Mr Dale Curtis</i> |
| <i>Counsel Assisting the Commission:</i> | <i>Ms Anna Clarke</i> |