



# Victorian Commission for Gambling and Liquor Regulation

## REASONS FOR DECISION

In the matter of an application by Jayeesar Pty Ltd under section 3.3.4(1) of the *Gambling Regulation Act 2003* for approval of the premises, the Robin Hood Hotel, 33 Peel Street North, Ballarat as suitable for gaming with twenty (20) Electronic Gaming Machines.

**Commission:**

Mr Mark Brennan, Chair  
Mr Bruce Thompson, Deputy Chair  
Mr Des Powell, Commissioner

**Appearances:**

Ms Sarah Porritt of Counsel for the Applicant  
(instructed by Bazzani Scully Brand)  
Mr Bronte Campbell as Counsel Assisting the Commission

**Decision:**

That the application be granted

**Signed:**

**Mark Brennan**  
Chair

25 JUN 2012



## REASONS FOR DECISION

### BACKGROUND

1. This is an application by Jayeesar Pty Ltd (**Applicant**) for the approval of the Robin Hood Hotel at 33 Peel Street North, Ballarat (**Premises**) as suitable for gaming with 20 electronic gaming machines (**EGMs**).
2. The Applicant is a company within the Cook, Beaumont and Partners Group and has entered into a contract of sale to purchase the Premises. However, completion of the contract of sale is contingent on approval of this application.
3. The relevant municipal council in respect of this application is the City of Ballarat. On 11 January 2012, the City of Ballarat advised the Commission that it intended to make a submission regarding this application. The City of Ballarat later resolved to not make a submission and was not represented at the hearing of the application.

### THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. Determination of this application is governed by section 3.3.8(1) of the *Gambling Regulation Act 2003* (**the Act**) which states that the Commission must determine an application by either granting or refusing a premises as suitable for gambling.
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>1</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.
6. An applicant must satisfy the Commission of the "no net detriment test" and the other matters set out in section 3.3.7 of the Act.<sup>2</sup>

"(1) The Commission must not grant an application for approval of premises as suitable for gaming unless satisfied that –

(a) the Applicant has authority to make the application in respect of the premises; and

<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).



- (b) the premises are or, on the completion of building works will be, suitable for the management and operation of gaming machines; and
    - (c) the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located.
  - (2) In particular, the Commission must consider whether the size, layout and facilities of the premises are or will be suitable.
  - (3) The Commission must also consider any submission made by the relevant responsible authority under section 3.3.6."
7. The no net detriment test requires the Commission to weigh the likely positive economic and social 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>

#### THE ROBIN HOOD HOTEL AND THE CITY OF BALLARAT

8. The Premises is located within the City of Ballarat (**Ballarat**) in the historical Bakery Hill precinct and is approximately 105 kilometres west of central Melbourne. Ballarat is a regional Local Government Area (**Ballarat LGA**) covering approximately 740km<sup>2</sup>. Ballarat has an adult population of 73,635 which is projected to grow by 1.5% over the next four years.
9. The Ballarat LGA is subject to a regional cap of 663 EGMs. At the time of the hearing of this application, 663 EGMs were approved for operation in the Ballarat LGA. However, the Commission is aware that only 616 EGMs are currently operating in venues within the municipality.<sup>4</sup>
10. The Ballarat LGA has four statistical local areas<sup>5</sup> and 13 gaming venues within the municipality. In terms of gaming statistics, the Ballarat LGA has an above average EGM density and expenditure per EGM compared with other regional municipalities. The Ballarat LGA is ranked 3<sup>rd</sup> highest out of the 13 regional municipalities in average EGM expenditure per adult.

<sup>3</sup> *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, 435 ("Romsey").

<sup>4</sup> The Commission has approved the installation of 47 EGMs in three venues; the Bended Elbow (30), the Red Lion Hotel (9) and the Ballarat Golf Club (8), however EGMs are yet to be installed in these venues.

<sup>5</sup> A group of one or more *Census* Collection Districts



11. The material before the Commission indicated that on the Social and Economic Index of Disadvantage for Local Areas (**SEIFA**) the municipality is not particularly disadvantaged. Further, when the municipality is broken down into Statistical Local Areas (**SLA**), the Premises is located within the Ballarat – Central SLA, which exhibits lower to average levels of disadvantage.
12. The Premises currently consists of a bistro, indoor children's play area, small function room, first floor accommodation and public bar and bottle shop. Should this application be approved, the Applicant intends to undertake significant renovation works on the venue.

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

13. The Applicant filed with the Commission with extensive material in support of its application, including:
  - a) an application for a planning permit dated 12 December 2011;
  - b) Social and Economic Impact Statement prepared for the Robin Hood Hotel by Urbis Pty Ltd dated November 2011;
  - c) Expenditure Report prepared by Progressive Venue Services dated December 2011;
  - d) Witness Statement of Richard Davis dated December 2011; and
  - e) Witness Statement of Peter John Cook dated December 2011.
14. A statistical report prepared by Commission officers, titled Economic and Social Impact Report, dated February 2012 was also considered by the Commission.

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

15. The Applicant provided the Commission with an expenditure report prepared by Progressive Venue Services (**PVS**). Mr Richard Whitehouse, a director of PVS and author of the expenditure report, appeared before the Commission to give evidence and be cross-examined.
16. PVS uses the Geotech Model to estimate likely EGM expenditure in gaming venues. The Geotech Model is a geo-spatial model based on the convenience of a venue, its attractiveness



and the expenditure statistics for the relevant municipality. The expenditure modelling conducted by PVS was based on the following assumptions:

- a) the George Hotel, Red Lion Hotel and Ballarat Leagues Club will operate to their maximum number of approved machines;
  - b) the Ballarat RSL will remain closed; and
  - c) the Applicant will undertake the renovation works as proposed in their application.
17. Mr Whitehouse predicts the expected annual expenditure on the 20 EGMs to be installed in the Premises to be between \$1,233,688 and \$1,381,731, of which 92.3% would be transferred from other venues. Accordingly, the new expenditure on EGMs is predicted to be between \$95,453 and \$106,907 and equates to an increase of expenditure of between 0.17% and 0.19% within the municipality. In Mr Whitehouse's opinion, the actual expenditure is likely to be at the higher range of the prediction.
18. Mr Whitehouse referred the Commission to the recent approval of another venue in Ballarat, the Bended Elbow, as a premises suitable for gaming with 30 EGMs. Mr Whitehouse told the Commission that the modelling did not take into account the approval of the Bended Elbow as the machines had yet to be installed in the venue. However, Mr Whitehouse expects that if both the Bended Elbow and the Robin Hood were to operate concurrently, the actual expenditure in both venues would decrease and the transferred expenditure would increase due to the competition between the two venues.
19. The Commission accepts Mr Whitehouse's expenditure prediction as reasonable.

#### ***Evidence of Mr Cook***

20. Mr Cook provided a witness statement and gave evidence at the hearing of the application. Mr Cook is the director of the Applicant and the joint Managing Director of the Cook, Beaumont and Partners Group (**the Group**). The Group operates 28 hospitality venues across Australia, 8 of which contain EGMs.
21. Mr Cook told the Commission that the Group had been looking to purchase a venue in Ballarat to redevelop and had initially selected another venue within the municipality. However, after discussions with the Ballarat City Council, it was deemed that the location of the venue was unsuitable as it did not comply with the Ballarat City Council's Gaming Policy. The Group then



identified the Robin Hood as an appropriate venue as it required redevelopment and met the Council's Gaming Policy. Mr Cook told the Commission that, throughout the site selection process and the making of this application, the Group has been engaged in positive and co-operative discussions with the Council.

22. Mr Cook told the Commission that the venue was built in the late 1800s during a boom in Ballarat, but in recent times has suffered from a lack of patronage and redevelopment. Currently the venue is operated under management and many of the areas of the venue are closed including the bar and bottle shop.
23. According to Mr Cook, the Group is seeking to redevelop the premises as a balanced venue where gaming is a small part of the broader entertainment offering. Mr Cook gave evidence that, in addition to the Group's hospitality business, the Group operates its own construction company. This enables the group to undertake large-scale renovations more efficiently and at a reduced cost compared with engaging an external construction company. Should this application be approved, the Applicant will renovate the venue at a cost of in excess of \$800,000, including:
  - a) upgrading the bistro and fit out;
  - b) installing a new kitchen;
  - c) enhancing the indoor children's play area;
  - d) creation of a lounge bar;
  - e) reintroduction of the public bar;
  - f) renovation of the function room;
  - g) introduction of a TAB wagering facility; and
  - h) the addition of a gaming lounge with 20 EGMs.
24. Mr Cook gave evidence that the proposed renovations would take around 8 weeks to complete and approximately a third of the renovation works will be undertaken by local sub-contractors.
25. In addition to the proposed renovation works, the Applicant proposes to provide \$50,000 per annum (indexed to the Consumer Price Index) to local community and sporting groups for the



life of the EGM entitlements<sup>6</sup>. Mr Cook gave evidence that he has had preliminary discussions with the Council about the distribution of the cash contribution and that the Applicant and Council intend to enter into arrangements to co-jointly manage the distribution of these funds.

26. Mr Cook told the Commission that it was not financially viable for the Group to purchase, renovate and provide the proposed community cash contribution without the cash flow that introduction of EGMs in the venue would bring to the business.
27. Mr Cook was questioned by the Commission as to whether he would be prepared to accept a condition on the venue operator's licence that would require the applicant to make good on its promise to provide the cash contributions to the community. Mr Cook told the Commission that he would accept such a condition on the premises approval if the Commission saw it necessary to impose such a condition. Mr Cook then made an express undertaking to the Commission, on behalf of the Applicant, that the cash contributions would be provided and would be distributed in cooperation with the Council.

#### ***Evidence of Mr Davis***

28. Mr Davis provided a witness statement and gave evidence at the hearing. Mr Davis holds the position of Group Operations Manager within the Group and oversees the management of individual venues in the Group's portfolio. Mr Davis is also responsible for the Group's compliance with responsible service of alcohol and gambling requirements.
29. Mr Davis gave evidence that the Group identified an opportunity to take on an underperforming venue and transform it into a well-balanced venue that focuses on high quality food and excellent customer service. Mr Davis stated to the Commission that gaming was a small part of the Group's operations but was financially significant.
30. Mr Davis told the Commission that, should the application be successful, the Group would employ between 10 and 12 full time staff, including a venue manager, to service the redeveloped venue.

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<sup>6</sup> The Applicant purchased 20 EGM entitlements at the 2010 Gaming Entitlement Auction. The Entitlements operate for a period of 10 years from August 2012.





31. Mr Davis gave evidence that the Applicant has developed a Responsible Gambling Policy for the venue that will be implemented should the application be successful. The Policy is based on the Australian Hotels Association standard and includes Group and venue specific initiatives to assist with harm minimisation. Mr Davis told the Commission that the Group has contracted a gaming industry specialist to assist the group with responsible service of gaming and conduct quarterly reviews of each of the Group's gaming venues.
32. Mr Davis also told the Commission that, should this application be granted, the Applicant would ask the Ballarat Gamblers Help organisation to assist with the implementation of EGMs in the venue and build strategies to minimise the risk of problem gaming. Mr Davis also gave evidence that the Applicant would be in constant contact with Gamblers Help to ensure the Applicant's responsible service of gaming policies are up to date.

***Social and Economic Impact Statement - Urbis***

33. The Applicant engaged Urbis Pty Ltd (**Urbis**) to prepare a social and economic impact statement to accompany its application. Mr Rhys Quick, director of Urbis and author of the impact statement, gave evidence at the hearing of the application.
34. Mr Quick stated that while the venue is located within the Ballarat CBD, it is important to note that the venue is not located in a retail precinct with high levels of pedestrian traffic. Mr Quick told the Commission that the venue is located on the very periphery of the CBD and is surrounded by commercial businesses and office buildings and is removed from the dense retail area of the Ballarat CBD. In Mr Quick's opinion, the venue is likely to have a broad range of patronage including those working in the CBD, tourists visiting Ballarat and members of the community from across the entire municipality.
35. Mr Quick gave evidence that Ballarat's social and economic statistics are unremarkable and typical of Victorian regional centres. Mr Quick gave evidence that in terms of social and economic disadvantage, Ballarat rates as slightly below the national average, however, Mr Quick noted that when SEIFA scores for Ballarat are broken down into the small area level, the areas surrounding the venue do not show signs of significant disadvantage.





36. Mr Quick acknowledged that the Ballarat LGA has a higher than average proportion of EGMs per adult and higher EGM expenditure per adult compared with other regional municipalities. However, Mr Quick told the Commission that it was important to interpret those gaming statistics with Ballarat's significant tourist trade in mind. Mr Quick estimates that only 60% of gaming expenditure in Ballarat comes from within the Ballarat LGA. The remainder of the expenditure is from tourists or from those residing in neighbouring municipalities.
37. Mr Quick noted that while currently there are only 616 EGMs operating in the Ballarat LGA, the Commission has granted approvals an additional 47 EGMs to operate within the municipality that are yet to be implemented. As the municipal cap on EGMs in Ballarat is 663, approval of this application would mean that for the EGMs to be installed in this venue, they would in effect need to be transferred from another venue in the municipality as the current approvals have met the municipal cap.
38. Mr Quick told the Commission that the venue currently only operates the bistro and only on certain days of the week. In Mr Quick's opinion, if the Applicant was to not go through with the purchase of the venue, it is very likely that the venue would cease operating. Mr Quick gave evidence that, in his opinion, the Group is well placed as an experienced gaming venue operator with established gaming policies to introduce gaming into the venue while minimising the risk of problem gaming.
39. In conclusion, Mr Quick stated the primary social and economic benefits to the Ballarat municipality, should the application be approved, to be:
- a) an improved venue offering a full range of facilities with food and beverage, gaming and function facilities that would otherwise cease operations;
  - b) increased employment at the venue of up to 12 positions;
  - c) community contributions of no less than \$50,000 per annum to local community and sporting groups to be distributed in conjunction with the Council; and
  - d) an economic stimulus effect within the region.
40. In Mr Quick's opinion, the introduction of 20 EGMs in the Premises will have a neutral to positive benefit on the local community.



## ASSESSMENT OF ECONOMIC AND SOCIAL IMPACT

41. Consistent with the approach taken by Justice Bell in *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, the Commission considers it useful to separately analyse the economic and social impacts of an application.

### ***Social Impact***

42. The Commission acknowledges that approval of any new gaming venue carries with it a risk of an increase in problem gaming and the negative flow on effects. Those effects are felt both socially and economically. It is for this reason, that the Commission places considerable weight on a venue operator's commitment to harm minimisation and responsible service of gaming.
43. The Commission is satisfied that the Applicant has appropriate strategies in place to minimise the risk of problem gambling and accepts that the Applicant, and the Group, is committed to the responsible service of gaming.
44. Further, the Commission is of the view that the risk of an increase in problem gaming within the municipality is minimal as approval of this application will not result in a net increase in the number of machines permitted within the Ballarat LGA
45. The Commission accepts that it is likely that the Premises would cease operations if the Applicant did not purchase it. The Commission considers the purchase and proposed redevelopment of the venue to be a moderate social benefit to the municipality. The Commission also notes the location of the Premises complies with the Council's Gaming Policy.
46. Additionally, the Commission is of the view that the cash contributions that will be provided to community and sporting groups will have a positive social impact within the municipality.
47. On balance, Commission considers that the likely social impact of the proposal will be neutral.



### ***Economic Impact***

48. The Commission accepts that approval of this application will result in an increase in gaming expenditure of approximately \$106,907 in the municipality. The municipality can be expected to receive an economic stimulus from an increase in expenditure; however, 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.
49. The Commission considers that the significant economic benefit of the proposal is the Applicant's commitment to provide \$50,000 annually and indexed to CPI for the life of the EGM entitlements.<sup>7</sup> The contribution is to be used in consultation with Council to benefit community groups. The Commission encourages both the Applicant and the Council to use this contribution to support community organisations that assist with problem gambling and associated social issues.
50. The Commission notes the Applicant's commitment to make good on its promise to provide the cash contributions and accepts the undertaking proffered by Mr Cook. The Commission has determined that, in light of Mr Cook's undertaking, a condition requiring the cash contributions to be made will not be imposed in this particular case.
51. Overall, the Commission accepts that there is a small potential for some economic downside of the application through possible increased problem gambling expenditure. In any event, this potential negative is outweighed by the positive economic benefits of this application. Accordingly, the Commission considers that there will be a positive economic impact on the community if the application were to be approved.

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<sup>7</sup> Commencing after the first full year of operation of EGMs in the Premises



## CONCLUSION

52. The Commission has considered the likely economic and social impacts of the proposal and concluded that approval of this application will have a neutral social impact and a positive economic impact to the municipality.
53. Further, on the material, the Commission is satisfied of the other matters in section 3.3.7(1), namely that the Applicant has the authority to make the application and the premises will be suitable for the operation of gaming machines.
54. The Commission is also satisfied that the Applicant understands and will act on its obligations to, so far as is reasonable, take measures to prevent problem gambling. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the application.