Victorian Commission for Gambling Regulation

DECISION AND REASONS FOR DECISION

In the matter of the *Gambling Regulation Act* 2003

– and –

In the matter of an application by the Ballarat RSL Sub-Branch Inc under section 3.4.17(1)(b) of the Act for amendment of the venue operator's licence to vary the number of gaming machines at the approved premises, the Ballarat RSL Club, 2 Lyons Street, Ballarat, from ten (10) to thirty three (33).

DECISION

Commission: Mrs J. King, Deputy Chair
Mr R. Smith, Sessional Commissioner

Date: 2 April 2009

Decision: That the application be granted.

(Sgd.) J. King, Deputy Chair

REASONS FOR DECISION

2 April 2009 Mrs J King, Deputy Chair

Mr Rod Smith, Sessional Commissioner

THE LEGISLATION

1. This is an application by the Ballarat RSL Sub-Branch Inc under section 3.4.17(1)(b) of the *Gambling Regulation Act* 2003 (the Act) for an amendment of the venue operator's licence to vary the number of gaming machines at the approved premises, the Ballarat RSL Club, 2 Lyons Street, Ballarat from ten (10) to thirty three(33).

2. Section 10.1.22 of the Act provides that an application to amend a venue operator's licence to increase the number of gaming machines (egms) at a venue must be held in public, unless there are special circumstances requiring that the inquiry, or part thereof, be held in private. The present application was heard entirely in public. The Commission's power to hold inquiries is found in section 10.1.20 of the Act.

3. Determination of this type of application is governed by section 3.4.20(1) of the Act. In terms of the inquiry itself and the evidence brought the most relevant provision is section 3.4.20(1)(c), which provides:-

   (1) without limiting the matters which the Commission may consider in deciding whether to make a proposed amendment, the Commission must not amend a venue operator's licence unless–

(c) if the proposed amendment will result in an increase in the number of gaming machines permitted in an approved venue, the Commission is satisfied that 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. Upon making an application the applicant is required by section 3.4.18(2) to send a copy of the proposal to the local government authority of the municipal district in which the approved premises is located. The relevant authority then has the right, by virtue of section 3.4.19(1), to make a submission to the Commission addressing the economic and social impact of the proposed amendment on the well-being of the community of the municipal district, taking into account the impact of the proposed amendment on surrounding districts.

CITY OF BALLARAT

5. The applicant had complied with the requirements of the Act and provided the Relevant Authority (the Council) with a copy of the application.

6. The Council had indicated its intention to object to an earlier application for an increase of twenty nine (29) machines at this venue. By letter dated 14 November 2008, the Council advised the Commission that "Council has received confirmation from the applicant that they will reduce the number of egms being the subject of the application being amended, to now incorporate the addition of only

twenty three (23) machines. As a result of the application being amended, Council can confirm its support for this application." The Council also confirmed that it would not be making a submission to the inquiry. The Council stated that its decision to support the application was "in alignment with Council's Gaming Policy and the precedent Council set in April 2006".

7. The City of Ballarat is now in a capped area for gaming machines with the result that any increase in the number of machines at a venue can only be approved if the machines are transferred from within the municipality.

8. All of the machines are to be sourced from the Buninyong Golf Club as a result of an agreement reached between it, the State Branch of the RSL and the Sub-Branch. The Buninyong Golf Club, which is in the capped area, will cease to be a gaming venue.

BACKGROUND TO THE APPLICATION

9. The Ballarat RSL Sub- Branch was established in 1920. Ballarat is one of Victoria's biggest and oldest regional cities. The Sub-Branch is located in the city centre, a kilometre from the main retail and commercial activity strip, in a Federation heritage listed building. The building, whilst historic and grand is badly in need of major structural renovation and refurbishment, and, as conceded by the applicant, is becoming totally unsuitable for the functions and activities of the RSL. There have also been other modern entertainment venues established in the vicinity of the RSL that have highlighted the lack of competitiveness and suitability of the premises.

10. For over a decade the Ballarat RSL, with the support of the Ballarat Council have been endeavouring to find alternative premises. No suitable alternative has been identified to date, and discussions in relation to some prospective sites have, for various reasons, not been successful. Negotiations to resolve this are continuing. The club had also been in discussions with the Buninyong Golf Club which was seeking to have their allocation of 29 egms removed, and in July 2005 an agreement was reached between the parties to transfer the machines to the RSL Sub Branch subject to the necessary VCGR approval.

11. Because of the urgency which faces the club, and the failure to date to secure an alternative site, the Sub-Branch, supported by the Victorian State RSL, decided to proceed with the arrangement reached with the Buninyong Golf Club and relocate the machines to the existing premises for a period of 3 to 5 years while another site is found. Urgent renovations will be made to the existing premises to make them suitable in the interim.

12. The club's facilities are spread over two floors. On the ground floor there is a bistro/meeting room which can accommodate up to 120 people. There are darts and pool equipment, and a small stage area. The kitchen, bar and gaming room are located on the ground floor. On the first floor there is the Memorabilia Room, a utility room, and the Long Room which is used for meetings, wakes and parties, and the Office of Aged Care. The club has been located in these premises for some 88 years.

13. A visit to the venue by the Commission, after the hearing, revealed it to be, indeed, a gracious old building with an interesting and significant history, much of this associated with the establishment and operation of the RSL in Ballarat. The open space at the rear of the ground floor, presently accommodating the bistro and bar, is reasonably large whilst the gaming room is confined to a separate area off the bar. This small area would not allow for the accommodation of the additional machines sought in this application.

14. In the course of this visit it was noted that relevant signs as to minors accessing the gaming room and egm displays were in place and visible.

15. During the visit the planned alterations to the premises were explained. The present stage area at the rear would be developed as a new gaming room, separated from the bar and bistro by a glass wall. Improvements would also be made to access and other amenities.

THE CASE PRESENTED BY THE APPLICANT

16. The applicant was represented by Ms Susan Brennan of counsel, who called Major General David McLachlan AO, State President of the RSL, Mr Brian Cairns, Executive Officer of the Licensed Sub-Branches Association, Mr Richard Whitehouse, Tattersall's Manager of Channel Strategy, and Mr Rhys Quick, Economic Property Consultant of URBIS to give evidence.

17. Major General McLachlan adopted his written witness statement and gave additional evidence. He said that the Ballarat RSL Sub-Branch was of strategic interest to the RSL because of the importance of

Ballarat as a Regional Centre with over 2000 veterans as well as ex-servicemen and women and their dependants. In addition the sub-branches in surrounding areas such as Sebastopol, Creswick, Ballan, Buninyong and Clunes and others "need support from a nearby, larger, commercial, overarching sub-branch such as the Ballarat RSL" if they are to survive and fulfill their limited but valuable role as a meeting place for veterans.

18. He then told the Commission of the precarious situation of the Sub-Branch. While the building is a major issue of concern, the Sub-Branch also has critical financial and operational problems which in part have been caused and exacerbated by the poor state of the premises and amenities. Commercial operations have been in decline. Hours of operation of the bistro had of necessity been curtailed, and the whole club operates with a skeleton staff and the support of volunteers.

19. In his evidence Major General McLachlan said that after visiting the Sub-Branch when he became State President in 2002, and seeing the critical position of the club, steps had been taken to: "reconstitute the committee of management, to then seek to provide some overview with advice from other areas of the league to go in and assist in the management of that sub-branch, and also to bolster up the committee." He told the Commission that ANZAC House, i.e. the Victorian State Branch, is the trustee of the property at Ballarat, and the State Executive has both the responsibility and the authority to put in place the mechanisms to provide necessary financial and administrative support. He made this point strongly in his evidence.

20. While the commercial aspects of the Sub-Branch had been run down over the last few years, the welfare, education and commemorative work had continued. The Aged Care Welfare service is co-ordinated from the premises by a full time employee supported by volunteers who contribute 200 hours per month to welfare activities, conducted in difficult circumstances as the offices are located on the first floor with no ramp or lift access.

21. The Sub-Branch conducts educational programs for students and others. The Memorabilia Room has an extensive collection of photographs and documents used for this purpose.

22. The Sub-Branch is also Trustee for the Australian Ex-Prisoner of War National Memorial which is located in the Botanical Gardens in Ballarat. This is a significant national War Memorial (it is the only one in Australia located outside of Canberra) and the services associated with it attract numbers of visitors. The club is anticipating being able to have many of these visitors include a stopover at the venue once the facilities have been restored to an appropriate standard. Currently it is not possible to build on the goodwill engendered.

23. The level of debt outstanding was a matter of great concern to the Commission. Since 2002 the Victorian Branch has provided financial backing to the Ballarat RSL and other support. Major General McLachlan gave evidence that while the current situation could not continue indefinitely the financial support would be in place until such time as the Sub-Branch was in a position to repay the debt. Currently

that debt is approximately $600,000. Interest is charged at the flat rate of 6%. At this point the Sub-Branch is making no repayments.

24. Major General McLachlan told the Commission that ANZAC House was closely monitoring the club's financial situation with monthly reports including the operation of the egms and all other expenditure. He further explained that ANZAC House had the authority to replace a committee of management, and had done so on occasion, or in an extreme case to remove the charter of the Sub-Branch and close it completely.

25. In response to a question from the Commission, Major General McLachlan said that corporate governance, committee structure and performance were matters that the RSL took very seriously. The State Branch conducts training for committee members to ensure that they are equipped to carry out the duties of office. The new committee which has recently been elected to take office at Ballarat RSL will be assisted with their obligations.

26. Major General McLachlan said that he believed the renovations and changes would bring the venue closer to the standard the members deserved and give the club the stability and revenue needed to function until a satisfactory alternative is found. He said that a proposal currently under consideration was promising. He referred to the range of services offered by Geelong and Bendigo RSL to their members and said he hoped that over time Ballarat would be able to do the same.

27. It was apparent from the evidence of Major General McLachlan that the Victorian Branch has supported and will continue to stand behind the Sub-Branch. This support will be ongoing and clearly ensures strong governance and necessary financial backing.

28. Mr Cairns gave evidence to the inquiry in relation to his role. Since October 2008 he has been Executive Officer of the Licensed Sub-Branches Association (LSBA), based at ANZAC House in Melbourne. He had previously been general manager of the Ararat Sub-Branch for a period of 12 years. That club had performed very well both in the provision of welfare and other services to veterans and also commercially.

29. Ararat Sub-Branch, because of its proximity to Ballarat (some 45 minutes distance), and because of its more advantageous financial and management capacities had provided assistance to Ballarat for a period of over 6 years. That assistance had consisted of advice to the committee and management, as well as assistance with operational matters.

30. Mr Cairns gave evidence about the current operations of the club and the proposals and opportunities to build the membership and financial performance of the club. The club had been progressively rundown over the past few years with dwindling membership, scaled back trading hours, financial problems and the resulting necessity to operate with a skeleton staff and to rely on the goodwill of a few long term employees and volunteers who covered a range of activities. This situation had exacerbated the difficulties of the club.

31. A further issue of considerable concern to the Commission was whether the Ballarat RSL would have the necessary capacity and skills to manage the commercial operations if the premises were upgraded, additional gaming machines installed and additional patronage attracted.

32. In this context the Commission heard that Mr Cairns' new appointment with the LSBA includes responsibility to recruit, train and assist management with the commercial and operational aspects of the club. He would also be actively engaged in the building upgrade and refurbishment.

33. ANZAC House wanted to see a program in place, with Mr Cairns taking a key role in working with the Sub-Branch on implementation, that would concentrate on extending hours of operation and commercial activities, building the social membership and associated activities and ensuring that suitably trained management and staff are recruited. He said that the RSL has a strong following in Ballarat and it was the hope and expectation that more club activities would enable the Sub-Branch to attract patrons and compete with the other venues.

34. It was apparent to the Commission that Mr Cairns brings significant experience in this area backed by the resources of the State Branch, and that both parties are intent on restoring Ballarat RSL to the status and performance expected in a large regional centre.

35. Mr Cairns said that builders had been engaged to draw up plans for the necessary improvements to the building to accommodate additional egms, and the urgently needed facilities upgrade. Tattersall's and the State Branch had been consulted on the proposals, and the State Branch would fund the upgrade which is estimated to be between $150,000 and $200,000. This amount would be added to the debt owed to ANZAC House.

36. The Commission was told by counsel for the applicant that the agreement with Buninyong Golf Club was based on the understanding that if approval was granted for a lesser number of egms than 33, with the additional 23 coming from the Golf Club, either party could terminate the transaction and the golf club would be at liberty to not surrender its licence. The financial settlement agreed with the golf club was underwritten by ANZAC House. The agreement and the deed of variation amending the number of machines to 33 were tendered to the inquiry.

37. The Commission asked about the composition of the Sub-Branch Committee, and expressed surprise and some concern that no-one from the Committee or Sub-Branch was giving evidence to the inquiry. In previous inquiries the Commission has been greatly assisted by the experience and insights into the local conditions and problems faced by RSL clubs, which have been given in evidence by committee members.

38. Counsel for the applicant advised that the President of the Sub-Branch and other Committee members were present and prepared to appear before the Commission. Mr Maurice Keating, Honorary Secretary took

the oath and gave evidence. He said that there are two staff and a work experience junior who deal with finance and administration, the gaming room and commercial operations. Mr Keating deals with the business of the Sub-Branch and is in constant touch with Head Office.

39. Mr Keating told the Commission that the club had been viable previously and had regularly attracted visitors and patrons. He was confident that with the changes that the club was endeavouring to put in place that business could be attracted back again. He also referred to the importance of the support the Sub-Branch had from the State RSL. He said that he was optimistic that despite the competition and difficulties, the club had the potential to build on the goodwill in Ballarat towards the RSL and rebuild it into a successful operation. He said that the club had been unable to remain viable with only 10 gaming machines and ultimately the decision had been made to scale back and reduce costs until such time as stability had been restored.

40. Mr Keating acknowledged that the committee, although it consisted of eleven members, was short of members with commercial experience, and steps would be taken to address that situation.

41. Having heard evidence from Mr Keating and having had the opportunity to speak with him and Committee members at its subsequent visit the Commission is impressed by the dedication and commitment of the committee.

42. Mr Rhys Quick had prepared a Social and Economic Impact Assessment Report dated September 2008. He had subsequently made

a short submission noting the amendment of the application from 29 to 23 egms, and further noting that there was no other change to his earlier report.

43. In his report Mr Quick had included the latest SEIFA Index of Relative Socio-Economic Disadvantage which indicates that the City of Ballarat with a SEIFA score of 983 is ranked 32 out of 80 local government municipalities in Victoria, with a higher score meaning that a municipality is relatively less disadvantaged. At the Statistical Local Area level Ballarat Central, the SLA where the RSL is located is ranked at 61 out of 204, while Ballarat South where the Buninyong Golf Club is located is ranked at 56 of 204. Mr Quick concluded that this would indicate the area to which the egms are to be transferred was a slightly better off socio-economic area than Ballarat South from which the machines are to be transferred.

44. In this context the subsequent inspection of the Club premises and the surrounding environs suggests that the area is not one which demonstrates obvious disadvantage. It is close to but not within the main business and commercial district of Ballarat.

45. Other relevant statistics drawn from Mr Quick's report and evidence show that Ballarat is growing at an average rate which is likely to continue. Most of this growth is occurring on the edge of the city in new residential developments. The area around the RSL has a higher proportion of 18 to 39 year olds, than the city generally. There is also a higher concentration of white collar and professional workers in that area of the city, reflecting the fact that it is the commercial centre.

46. Unemployment in Ballarat for the September 2008 quarter is 7.9%, which is considerably higher than the Victorian country average of 6.5%, and the State average of 4.8%. Mr Quick said that one explanation for the higher than average rate could be that people move from rural and outlying areas to regional centres in search of employment.

47. In his report Mr Quick had referred to the importance of tourism in the Ballarat Region. This is a matter of some significance as the RSL club hopes to increase its patrons and commercial activities by tapping into this market. In this regard the most likely source of increased business and revenue is the tourism attracted by the Australian Ex-Prisoner of War National Memorial, referred to earlier. The very impressive collection of memorabilia displayed at the RSL would seem to be of interest to visitors to the War Memorial, and the club should be an attractive meal and stop-over option once the renovations and improved bistro services are in place.

GAMING IN BALLARAT

48. There are currently 15 venues in the City of Ballarat, and a total of 663 egms. If this application is granted in full there will be a reduction of 1 in the number of venues, and a reduction of 6 in the number of egms. While all 29 egms will be removed from the Buninyong Golf Club, only 23 will be transferred to the Ballarat RSL Sub Branch and the remainder removed from the LGA.

49. Gaming expenditure in Ballarat is higher than most other Victorian municipalities. Net expenditure within the city is $54,899,468, which amounts to $805 per adult (the figures are for 2007/08). This figure compares with the country average of $522 and the state average of $656. Based on the figures estimated by Tattersall's (see paragraph 52), if the application were to be granted in full the change would be a very slight reduction in expenditure of -0.87%.

50. The final witness for the applicant was Mr Richard Whitehouse, Divisional Manager, Strategy for Tattersall's. He adopted the statement which had been submitted, and confirmed that the analysis dated 16 December 2008 by Mr Kannon Nair had been prepared under his supervision. As has been the case in recent applications involving Tattersall's his calculations of expenditure and transferred expenditure were based on the application of the Geotech Model. This model has been explained in detail to the Commission previously and has been accepted as the Tattersall's model for expenditure predictions even though there have been some shortcomings acknowledged in its application, and the model is "refreshed" and revised periodically.

51. Mr Whitehouse said in his evidence that he and Mr Nair had reviewed the figures produced by the Geotech model but, on the basis of their experience, had then adjusted the figures to take account of the particular aspects of the Ballarat RSL and the anticipated changes. He said that the venue was currently the worst performing Tattersall's venue in the State, and even with the proposed renovations it would still be "only just meeting requirements." The addition of the 23 egms, the appointment of professional management and extension of trading

hours would, in their opinion, result in higher revenue performance than the Geotech Model prediction.

52. Using the "upper prediction" which Mr Whitehouse had applied resulted in predicted annual expenditure at this venue of $623,979, of which $597,951 (95.8%) was transferred and $26,027 new expenditure. The impact on expenditure in Ballarat LGA, when the closure of the Buninyong Golf Club is taken into account, for the first twelve months would be a decrease of $475,432.

OTHER MATTERS

53. Shortly before the hearing the Commission received correspondence from a concerned member of the public in which a number of issues were raised with respect to this application.

54. In summary these issues related to the following matters: comparison of the SEIFA figures and the egms density between the location from which the egms were being removed to that where they were to be located, harm minimisation, the adequacy of the Ballarat RSL as a gaming venue, increased player losses in the City of Ballarat and the lack of positive economic and social impacts.

55. In relation to the first of these issues the Commission is satisfied, based on the matters referred to paragraphs 43 and 44 above that the granting of this application will not lead to the egms being located in a more disadvantaged area than that from which they are sourced.

56. In relation to the second of the issues the Commission is mindful that there are already a number of venues located in the Ballarat Central SLA and the relocation of the egms to this SLA will lead to an increase in density in that SLA. However the Commission is of the view that the net reduction in the total number of egms in the City of Ballarat together with the removal of one gaming venue from the City militates against this issue being of concern.

57. In respect of the concerns raised in respect of harm minimisation we refer what we have set out in the preceding three paragraphs.

58. As to the inadequacy of the venue we have commented elsewhere in these reasons on this issue and are satisfied that when the anticipated renovations take place this will no longer be a concern.

59. As to the issue of the level of player loss, we refer to the conclusions in paragraph 52 above.

60. As to the final matter raised we are satisfied, based on the evidence put to the Commission that there will be no net economic and social detriment to the municipality. It should be noted at this point that the applicant does not need to demonstrate a net positive economic and social impact but, rather, that there will be no net detriment.

CONCLUSION

61. At the outset of this hearing it was put to the Commission by Counsel for the Applicant that this was a straightforward application dealing with the RSL Sub-Branch's need to scale up so that the welfare and

traditional activities which the RSL undertakes might be continued and expanded. However the application presented the Commission with a number of concerns which needed to be addressed before the Commission could reach a decision.

62. In particular the Commission firstly needed to satisfy itself as to the financial standing of the Sub-Branch and secondly to be persuaded that appropriate governance and skills would be put in place to ensure that the venue could operate with the increased number of machines if the application were to be granted.

63. In regard to the financial stability of the Sub-Branch the Commission was assured that the State RSL provides a level of support and oversight that effectively underwrites the Sub-Branch. It does so because of the importance it attaches to the strategic significance of Ballarat to the RSL in Victoria. Major General McLachlan assured the Commission of the financial and managerial support of ANZAC House which would continue until the Branch is able to operate independently once more. The Commission accepts the significance of the Sub-Branch to the RSL and accepts that the support provided by the State Branch will ensure ongoing financial stability.

64. The second and related matter is the requirement to urgently upgrade the capability and skills of the committee and management team to ensure good governance and that the commercial operations of the club including gaming would be well run. Again the assurance of ANZAC House persuaded the Commission that an appropriate level of comfort could be taken in that regard, particularly as Mr Cairns would have a

hands on role with management until such time as professional management is in place. The Commission is also satisfied with the Committee's commitment and capacity to oversee the necessary improvements in the Club's operations.

65. The Commission has previously viewed favourably applications from RSL Sub-Branches. The services to veterans are a unique aspect of RSL Clubs. The Commission is satisfied that the RSL plays an important part in the Ballarat community, despite its current difficulties, and with the improvements and management changes proposed will be able to quickly upgrade its services to the community.

66. In addition this application will remove one venue from the municipality and is in line with the Council's policy to concentrate gaming venues in the business district. Whilst both egm density and egm expenditure are above average in Ballarat it seems clear that the net effect of this proposal would be to achieve a small reduction in each.

67. Against the benefits which have been demonstrated there is ultimately, little evidence of detriment. The application also has the support of the Council which is a matter which the Commission takes into account.

68. After considering these matters the Commission has concluded that, in the context of Section 3.4.20(1) (c) there is no net detriment.

69. Before granting an application such as this, the Commission must consider the requirement in paragraph (a) of subsection 3.4.20(1), that

amendment of the licence to permit additional egms at a venue does not conflict with any direction given by the Minister under section 3.2.3 of the Act.

70. A direction has been given by the Minister for Gaming which specifies, relevantly, the maximum number of gaming machines permitted to operate in the State, the proportion of which is to be located outside the Melbourne Statistical Division, the allocation as between hotels and clubs and as between the gaming operators (being Tattersall's and Tabcorp). We are satisfied that, at the time of granting this application, the Ministerial direction under section 3.2.3 will not be contravened.

71. The administrative process of amending the licence will take place at a time subsequent to our decision, as allowed by section 3.4.20(4), which provides –

> "(4) An amendment takes effect when notice of the Commission's decision is given to the venue operator or on any later date that may be specified in the notice.

72. The administrative process of the amendment to the licence will only take place if the amendment of the licence will not result in the Commission being in breach of the Ministerial direction given under section 3.2.3, or any Ministerial direction in respect of regional caps which may be in effect at the relevant time.

73. The application is granted subject to modifications to the premises first being carried out in accordance with the plans and specifications tendered to the Commission.

The preceding 73 paragraphs are a true copy of the reasons for decision herein of –

Mrs J King, Deputy Chair
Mr Rod Smith, Sessional Commissioner

Dates of Hearing:	*26 February 2009*
Date of Decision:	*2 April 2009*
Counsel for the Applicant:	*Ms Susan Brennan*
Instructing Solicitors:	*Williams Winter*
Counsel Assisting the Commission:	*Mr S Parsons*