

22 April 2010

Mr Adrian Robb
Chief Executive Officer
Bayside City Council
Royal Avenue
SANDRINGHAM VIC 3191

Dear Mr Robb

In accordance with Section 84 of the Local Government Act 1989 and Clause 16 of the Local Law No: 1 – Governance Local Law, I hereby call a Special Meeting of Bayside City Council to be held on Tuesday 27 April 2010 at 6.30pm for the purpose of transacting the following business:

1. Newbay Hotel Gaming Licence – Consideration of the Victorian Gaming Commission determination

Yours faithfully

Cr Clifford Hayes
Mayor



**Special Meeting of Council
27 April 2010**

Notice Paper

For a Special Meeting of

Bayside City Council

Tuesday 27 April 2010

at 6.30pm

**Council Chamber
Civic Centre
Brighton**

To: Mayor and Councillors

In accordance with Section 84 of the Local Government Act 1989, a **Special Meeting of Bayside City Council** will be held in the **Council Chambers, Civic Centre, Brighton on Tuesday 27 April 2010 at 6.30pm** for the purpose of transacting the following business:

BUSINESS OF MEETING

Apologies

Declaration of Interests

Item 1. Newbay Hotel Gaming Licence – Consideration of the Victorian Gaming Commission determination

Please note: A report will be circulated to Councillors on Friday.

Adrian Robb
Chief Executive Officer

22 April 2010



Item 1. Newbay Hotel Gaming Licence – Consideration of the Victorian Gaming Commission determination

City Strategy / Statutory Planning
COR 1797

1. PURPOSE OF THE REPORT

To consider the decision of the Victorian Commission for Gambling Regulation (VCGR) to grant a gaming licence for the installation of gaming machines at the Newbay Hotel, Brighton, and to seek Council direction on an appeal of the VCGR's decision to VCAT.

2. BACKGROUND

In addition to obtaining a planning permit for the use of premises for gaming, approval from the Victorian Commission for Gambling Regulation (VCGR) must also be obtained.

Bright Newbay Hotel Pty Ltd has been seeking to obtain the necessary gaming and planning approvals to establish fifty (50) gaming machines at the Newbay Hotel, 329 New Street, Brighton.

An application for planning permission was lodged with Council on 26 August 2009 and concurrently, on 27 August 2009 an application was lodged with the VCGR.

Gambling Regulation Act 2003

The application to the VCGR was referred to Council for comment. Council considered the request at its meeting of 15 December 2009, where it determined to not support the application as follows:

1. *Resolves that the proposal to install 50 electronic gaming machines at the New Bay Hotel Brighton has not demonstrated that there would be a net community benefit, due to concerns regarding:*
 - a) Increase in gaming machine losses in Bayside through increased gaming machine density, particularly in the suburb of Brighton
 - b) Increase in problem gambling and numbers of community members seeking support services
 - c) Impact on the neighbourhood character of Brighton and residents' perceptions about the nature of their community
 - d) Diversion of discretionary expenditure away from other businesses, with potential impact particularly on the Bay Street and Church Street shopping precincts
 - e) Location of the venue close to schools and other community facilities
 - f) Impact of the proposal on residential amenity.

2. *Authorise a submission to be lodged with the Victorian Commission of Gambling Regulation noting Council's concerns regarding the application by the Newbay Hotel Brighton for approval of the premises as suitable for 50 electronic gaming machines.*

Council lodged a detailed written submission with the VCGR opposing the application for the approval of the premises as being considered suitable for gaming.

The VCGR conducted a hearing of the application on 15 and 17 February 2010 where Council presented its case before the Commission.

The Gambling Regulation Act 2003 only allows the Applicant and the Council to appear before the VCGR to determine whether a venue is suitable for gaming machines. The community is therefore represented by their local Council.

All Councils therefore have a "special status" in the consideration of applications concerning gaming machines under the Gambling Regulation Act 2003 and are effectively the "voice" of their local community.

The Newbay Hotel is located in a small Neighbourhood Activity Centre and is in close proximity to a number of community facilities including land uses, which are utilised by persons of 18 years and under. The Newbay Hotel is also within close proximity to important commercial centres in Bayside.

Council has received a number of letters of concern regarding the application for the gaming machines at the Newbay Hotel from Brighton Grammar School, Firbank Grammar, North Brighton Chamber of Commerce Inc. and St Stephen's Anglican Church.

Council was represented at the VCGR hearing by its Barrister with Council calling Ms Vivienne Colmer, Coordinator of Policy and Planning and Ms Heather Johnson, Director Community Services, to give evidence.

On 1 April 2010 the VCGR approved the application for 50 electronic gaming machines at the Newbay Hotel.

It is a condition of the approval that:

"the approval does not take effect until the applicant satisfies the Commission that the applicant has obtained a permit under the Planning and Environment Act 1987 permitting the premises to be used for gaming on gaming machines, or that the use of the premises for gaming on gaming machines would not contravene the planning scheme that applies under the Planning and Environment Act 1987."

It should also be noted that Council has engaged Planisphere Urban Strategy Planners to undertake a review of the Bayside Electronic Gaming Machines Policy 2008 in order to incorporate the Policy into the Bayside Planning Scheme.

Planisphere is currently consulting with the community and key stakeholders in order to establish their views on amongst other things appropriate locations for gaming venues within Bayside.

Planning and Environment Act 1987

A planning permit is required pursuant to Clause 52.28-2 of the Bayside Planning Scheme to use the site for the installation of fifty (50) gaming machines.

The application had been advertised with a total of sixteen (16) objections being received.

The application was also internally referred to Council's Social Planning Department who concluded that *"an assessment of the impacts overall, suggest that the balance of costs and benefits is insufficient to demonstrate a net community benefit."*

It was considered that the proposal did not satisfy the decision guideline requirements in relation to gaming machines at Clause 52.28 of the Bayside Planning Scheme.

At the Planning Committee Meeting of 7 December 2009 Application for Planning Permit No. 2009/427/1 was refused on the following grounds:

1. *Net community and social benefit to the wider Bayside community has not been demonstrated. The proposed increase of Electronic Gaming Machines will result in a negative impact on the Bayside Community.*
2. *The proposal is detrimental to the wellbeing of the community.*
3. *The location of the proposed gaming machines is not compatible with adjoining and nearby land uses and is located within an area which may appear to be a strip shopping centre.*
4. *The proposal fails to meet the test and requirements of the Bayside Electronic Gaming Machines Policy 2008.*

The permit applicant has lodged an appeal with the Victorian Civil and Administrative Tribunal, with a hearing date set for 5 August 2010.

3. DISCUSSION

The VCGR, in its determination found essentially that:

- the detriment of the gaming machines did not outweigh the benefits.
- the benefits included an improved hotel and that the applicant's director has satisfied the Commission of his commitment and enthusiasm to ensure that the venue becomes part of the local community offering a range of entertainment and social facilities.
- the increased access to gaming was a positive, as was the establishment of a \$50,000p.a. benevolent fund and generation of additional employment
- machine density would remain well below state averages

- they were not concerned about Council's concerns with the impact on Church Street and Bay Street traders, stating that *'the diversion of revenue streams from one business to another is a characteristic of a free economy'*
- the Brighton community is not disadvantaged and therefore not vulnerable to problem gambling
- they were not concerned about proximity to schools

The VCGR did not consider that the evidence presented on community perceptions about the detrimental effects was sufficient to outweigh the positive benefits of the application.

This application proposes to increase gaming machines within Bayside by 22%. This is a large increase in the context of Bayside and particularly for Brighton.

The intensification of gaming machines in Brighton will be 9.3 machines per 1,000 adults compared to the metropolitan average of 6.81 machines per 1,000 adults. This is a significant increase, particularly in the context of the Newbay Hotel's location within close proximity of a number of Schools and community facilities.

The VCGR found that new gaming expenditure within Bayside will be in the range of \$1.5 million to \$3 million per annum. This has the potential to result in expenditure that will be lost to Bayside's shopping centres and local businesses, particularly the Bay and Church Street shopping centres.

Council can lodge an appeal against the decision of the VCGR to VCAT. An appeal must be lodged within 28 days of the VCGR's decision by 29 April 2010.

Council can request that this appeal be heard at the same time as a Planning merits appeal that commences on 5 August 2010.

Since the handing down of the VCGR's decision, Council has received emails from residents raising concern with the issuing of the decision and requesting Council to appeal the decision to VCAT.

Whilst under separate legislation (Planning and Environment Act 1987 and Gambling Regulation Act 2003) approval under both is required to establish a gaming venue. It would be appropriate for Council to continue to use all avenues to facilities the upholding of Councils refusal of the planning application.

The grounds of an appeal would assert that the VCGR was incorrect in its findings.

4. IMPLICATIONS

4.1 Policy

Council by resolution has resolved to oppose both the gaming and planning applications for the Newbay Hotel.

4.2 Legal/Statutory requirements

Approval is required under both the Planning and Environment Act 1987 and the Gambling Regulation Act 2003 to establish a venue for gaming and approve the use of gaming machines. The applicant has appealed against Council's decision to refuse the planning application at VCAT. The Gambling Regulation Act 2003 provides that an aggrieved party can appeal a VCGR decision of VCAT.

4.3 Financial and resource implications

Council is already committed to representation at the VCAT for the refused planning application. It is anticipated that there will be little additional cost if the VCGR decision is also heard at the same time at VCAT as Barrister and expert witnesses have already been briefed in preparation for the VCAT hearing. Representative costs can be accommodated within the current budget.

4.4 Environmental impacts

Not applicable to this report.

4.5 Social impacts

Council in opposing the proposal has concluded that there are unacceptable negative social impacts.

5. CONSULTATION AND ENGAGEMENT

Not applicable to this report.

6. SUMMARY

There appears to be significant concern within the Bayside community that the installation of 50 gaming machines at the Newbay Hotel will generate a range of negative social and economic implications. This is reflected in the letters and emails that Council has received both before and after the VCGR's decision.

Having regard to the Productivity Commission's finding that the highest incidence of problem gamblers was among those who gambled on gaming machines and the prevalence of problem gambling was related to the degree of accessibility to gambling, especially to gaming machines, there is obviously merit in seeking a review of the VCGR's decision.

There is also merit in seeking a review of the VCGR's decision because a member of the Bayside community can not seek a review of the decision, and Council is the effectively the "voice" of the Bayside community in gaming matters.

RECOMMENDATION

That Council:

1. having considered the decision of the Victorian Commission for Gambling Regulation to approve the Newbay Hotel premises at 329 New Street, Brighton as being suitable for gaming appeal against that decision to the Victorian Civil and Administrative Tribunal on the following grounds:
 - a) In finding that the premises was suitable for the installation of electronic gaming machines, the Victorian Commission for Gaming Regulation was incorrect in finding that the net economic and social impact of the approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located in that:
 - i) It failed to properly define the community which would be effected;
 - ii) It failed to properly determine the detrimental factors to the well-being of the community;
 - iii) It gave inadequate weight to the detrimental impacts of a large electronic gaming machine venue on a prominent corner site in the local neighbourhood.
 - b) The Victorian Commission for Gaming Regulation wrongly found that the premises would be suitable for the management and operation of electronic gaming machines in that it failed to consider the disproportionate scale of the proposed gaming use in the context of a range of facilities that should be provided in a Hotel with gaming.
2. request the Victorian Civil and Administrative Tribunal to join this appeal with the Planning List Appeal (VCAT reference P3510/2009), to be heard at the same time.

BAYSIDE CITY COUNCIL

Special Meeting of Council

Notice is hereby given that a Special Meeting of Bayside City Council will be held in the Council Chambers, Civic Centre, Brighton, on Tuesday 27 April 2010 at 6.30pm for the purpose of transacting the following business:

- 1. Newbay Hotel Gaming Licence – Consideration of the Victorian Gaming Commission determination**

**Adrian Robb
Chief Executive Officer**

LINE ADVERT – PUBLIC NOTICES – Friday 23 April 2010