



Victorian Commission for Gambling and Liquor Regulation

DECISION

In the matter of an application by Casa D'Abruzzo Club Inc 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 Casa D'Abruzzo Club, situated at 55 O'Hearns Road, Epping from 60 to 75.

Commission: Miss G.A. Owen, Deputy Chairman
Ms K Hamond, Commissioner

Date of Decision: 27 July 2012

Decision: That the application be granted.

Signed:

**Miss G.A. Owen (Deputy Chairman)
on behalf of the Commission**



REASONS FOR DECISION

BACKGROUND

1. By application dated 21 March 2012, Casa D'Abruzzo Club Inc (**Applicant**) lodged an application pursuant to section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* (**Act**) for amendment of its venue operator's licence to vary the number of Electronic Gaming Machines (**EGMs**) permitted at the approved premises, the Casa D'Abruzzo Club, situated at 55 O'Hearns Road, Epping (**Club**) from 60 to 75.
2. While the City of Whittlesea (**Responsible Authority**) did not oppose the application it did make a written submission to the Commission outlining reasons for its decision not to oppose the application and suggesting certain conditions be imposed on the grant of the application. In making its decision the Commission has had regard to the Responsible Authority's submission.
3. Prior to the public inquiry, Commissioner Hamond conducted a site inspection of the Club. In making its decision the Commission has considered Commissioner Hamond's observations.
4. On 25 June 2012, the Commission held a public inquiry to consider the application.

LEGISLATION AND TASK BEFORE THE COMMISSION

5. The determination of this application is governed by section 3.4.20(1) of the Act, which states that the Commission must not amend a venue operator's licence to increase the number of EGMs permitted in an approved venue unless the Commission is satisfied that:
 - 5.1. amendment of the licence does not conflict with a Ministerial Direction given under section 3.2.3 of the Act;
 - 5.2. 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
 - 5.3. 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.
6. The Act recognises that, notwithstanding the benefit to individual freedom of choice in respect to the accessibility of gambling as a legitimate recreational activity, gaming on EGMs negatively impacts some communities and some members of some communities.¹
7. The 'no net detriment test' requires the Commission to weigh the likely positive economic

¹ Section 1.1(2) of the *Gambling Regulation Act 2003*



and social impact on the well-being of the community of granting the application against the likely negative economic and social impact. The test is satisfied if the Commission determines that granting the application will result in a positive or neutral economic and social impact.²

MATERIAL BEFORE THE COMMISSION

8. The Applicant filed extensive materials with the Commission including:
 - 8.1. Application Form, dated 21 March 2012, with an attached Application for Modification of the Existing Gaming Machine Area ;
 - 8.2. Social and Economic Impact Statement prepared by Rhys Quick, Director of Urbis Pty Ltd, (**Urbis**) dated March 2012;
 - 8.3. Expenditure Report prepared by Richard Whitehouse, Progressive Venue Services Australia Pty Ltd (**PVS**) dated March 2012;
 - 8.4. Witness Statement of Fernando Cardinale, President of the Applicant, dated 30 March 2012;
 - 8.5. Witness Statement of Moreno Urbani, General Manager of the Applicant, dated 30 March 2012;
 - 8.6. Witness Statement of Peter Vasta, Chartered Accountant and Partner, Cummings Flavel McCormack, dated 28 March 2012, including forecasted financial data for 60 and 75 EGMs; and
Witness Statement of Andrew William Jeynes, Responsible Gambling Manager, PVS, dated 26 March 2012, including the Responsible Gambling Policy for the Applicant.
9. An Economic and Social Impact Report and an addendum to that report, prepared by the Commission and dated June 2012, also were available to the Commission.
10. At the hearing the Applicant tendered the following documents:
 - 10.1. Exhibit A1- cashflow forecasts for 60 and 75 EGMs prepared by Mr Vasta;
 - 10.2. Exhibit A2 – ALH Back Fill Explanation prepared by Mr Jeynes;
 - 10.3. Exhibit A3 – Map of catchment area for the Applicant's gaming patrons prepared by Mr Quick; and

² *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd And Another* (2008) 19 VR 422 at 7, 56-57

³ The application of the Epping RSL Sub-branch Inc for an increase of 5 EGMs was granted by the Commission on 29 May 2012.

⁴ Member Cook in *Club Italia Sporting Club Inc v Brimbank CC* [2011] VCAT 2378 (22 December 2011)

⁵ *Club Italia* at 48



- 10.4. Exhibit A4 – Census Summary comparing 2011 and 2006 data for the City of Whittlesea and City of Melbourne prepared by Mr Quick.

MINISTERIAL DIRECTION

11. The granting of this application will not conflict with a Ministerial direction made pursuant to section 3.2.3 of the Act.

REGIONAL CAP

12. The area in the City of Whittlesea Local Government Area (**Whittlesea LGA**) covered by postcodes 3074, 3075, 3076, 3082 and 3083 is subject to a regional cap of 581 EGMs.
13. There are currently 581 EGMs located in Whittlesea LGA.
14. In August 2012, venue operators will assume responsibility for the ownership and operation of EGMs and must hold a gaming machine entitlement for each EGM in operation.
15. The Applicant purchased 15 additional entitlements at the 2010 Gaming Entitlement Auction. Some venues in the Whittlesea LGA purchased fewer entitlements than EGMs currently in operation. A total of 581 entitlements with a geographic area condition permitting operation in the Whittlesea LGA were sold at the Auction. Therefore, the granting of this application will not alter the number of EGMs in the Whittlesea LGA.

THE CLUB AND THE CITY OF WHITTLESEA

16. Whittlesea LGA is a metropolitan LGA located about 22 kilometres north of Melbourne. Whittlesea LGA comprises three Statistical Local Areas (**SLAs**): Whittlesea North; Whittlesea South-East and Whittlesea South-West.
17. With respect to social and economic disadvantage, the SLAs vary greatly. In the 2006 Social and Economic Indexes for Areas (**SEIFA**), published by the Australian Bureau of Statistics, Whittlesea North SLA is ranked 30 of 79 Metropolitan SLAs and is less disadvantaged relative to the SLAs of Whittlesea South-East (48 out of 79) and Whittlesea South-West (75 out of 79).
18. There are nine venues in the Whittlesea LGA. The Club is located in Whittlesea North, near the border of Whittlesea South-West. The material before the Commission showed that 30% of the Census Collection Districts in the area within a 2.5km radius of the Club are in the first quintile of disadvantage, which are relatively disadvantaged.
19. EGM expenditure at the Club in 2010/2011 was \$90,885, which is in excess of the average EGM expenditure at Victorian clubs for that period. It is important to note that there are six EGM venues south of the premises in the relatively disadvantaged SLAs of



Whittlesea South-East and Whittlesea South-West, four of which were within the top ten performing venues in Victoria in respect of gaming expenditure.

20. Annual population growth in Whittlesea LGA of over 3.5% per annum from 2011 to 2016 is projected by the Department of Planning and Community Development, which is faster than the projected Victorian average. The southern parts of Whittlesea LGA are well established urban areas, while the north remains rural. The Commission accepts that while the Club is located in an SLA with less disadvantage and high levels of population growth relative to the other SLAs in Whittlesea LGA, the area surrounding the Club shows signs of disadvantage.

EVIDENCE HEARD BY THE COMMISSION – APPLICANT

Club Evidence

21. Mr Fernando Cardinale, President of the Applicant, and Mr Urbani, General Manager of the Applicant, gave evidence at the hearing about the role of the Club and the proposed community contributions should the application be granted.
22. Mr Cardinale gave evidence that the Club was created to support migrants from Abruzzo, Italy and has since developed into a community centre for the Epping area. The Club currently has about 1200 social members and about 1900 community members.
23. Mr Urbani told the Commission that the Club makes in-kind and financial contributions to the community including:
 - 23.1. hosting functions for community groups, such as Down Syndrome Victoria;
 - 23.2. providing sporting facilities, including bocce courts and soccer pitches; and
 - 23.3. providing financial support to groups including the Cancer Foundation, Northern Hospital and community sporting groups.
24. Mr Cardinale told the Commission that to date EGM revenue had assisted the Applicant to upgrade Club facilities, including sporting facilities for use by the community as well as members, and that the granting of the application would enable the Applicant to expand and provide greater facilities to Club members and the community.
25. Details of the proposed upgrade to the Club's facilities were set out in the Urbis Social and Economic Impact Statement and Mr Cardinale's witness statement:
 - 25.1. Stage 1 – children's play area (\$65,000); eight tennis courts (\$1.4 million); computer tuition for elderly members of the community (\$27,000 setup cost plus ongoing costs); a scholarship fund to offer two students an opportunity to study language and history in Italy (up to \$50,000 per annum); and



- 25.2. Stage 2 – sports pavilion (\$4.149 million).
26. In respect of the proposed upgrade, Mr Cardinale acknowledged that the Applicant:
- 26.1. had received planning approval in 2003 for five tennis courts on the advice of its architect but had not intended to build the courts at that time and has not done so; and
- 26.2. does not have plans drawn up for the children's play area or Stage 2, or planning approval for eight tennis courts.
27. Mr Cardinale told the Commission that the Applicant is committed to completing Stage 1 and Stage 2. However the work would be delayed if the application were not granted due to inadequate funds and because the Applicant is financially conservative and has a policy not to borrow funds.

Economic and Social Evidence

28. Mr Rhys Quick gave evidence regarding the anticipated economic and social impact on Whittlesea North SLA and the area immediately surrounding the Club, should the application be granted.
29. Mr Quick told the Commission that the Club is located in one of two major growth corridors in Whittlesea. According to the Census figures, the population doubled between 2006 and 2011 in Whittlesea North SLA. Mr Quick stated that on the basis of population growth of about 20% per annum, the increase in EGM expenditure likely to result from 20 additional EGMs in the SLA, namely the 5 EGMs granted to Epping RSL and the 15 EGMs the subject of the application, is relatively small compared with the projected population growth.³
30. Mr Quick agreed with Mr Whitehouse's prediction that hotels in Whittlesea LGA are likely to seek to increase their EGMs by the number sought by the Club in the application, should the application be refused.
31. Mr Quick expressed the view that there was a benefit in granting an increase of EGMs at the Club, rather than granting an increase in EGMs to a hotel, because the risk of problem gambling is lower at clubs than hotels. In particular, Mr Quick gave evidence that the significantly lower level of EGM expenditure at clubs, the requirement for patrons to sign in at clubs and the greater interaction of staff and patrons at clubs resulted in problem gambling being less prevalent at clubs than hotels.

Evidence of Likely Expenditure

32. The Applicant called two witnesses to give evidence as to the likely EGM expenditure



that would result from granting the application

- 32.1. Richard Whitehouse, PVS, who compared the likely EGM expenditure in Whittlesea LGA should the application be granted, against the expenditure should the application be refused;
- 32.2. Peter Vasta, Chartered Accountant and Partner, Cummings Flavel McCormack, who gave evidence comparing the financial impact on the Applicant of operating 60 EGMs and 75 EGMs.
33. Mr Whitehouse applied the Geotech Top Up Model and estimated that, based on the EGM expenditure figures from 2010/11, the likely increase in EGM expenditure is \$1,200,498 per annum should the application be granted.
34. Mr Whitehouse gave evidence that 88.9% of that likely EGM expenditure would be transferred from other venues. Mr Whitehouse noted that the Geotech prediction did not take into consideration the Club's location in a population growth corridor. Accordingly, Mr Whitehouse considered it appropriate to discount the predicted EGM expenditure transfer rate to 80%. On this basis Mr Whitehouse estimated the total new EGM expenditure to be \$240,100 per annum.
35. The Commission accepts Mr Whitehouse's transfer expenditure prediction as reasonable.
36. Mr Whitehouse also gave evidence that, if the application were refused, the Australian Leisure and Hospitality Group (**ALH**) would have the capacity, and was likely, to 'backfill' by increasing the number of EGMs at ALH venues in Whittlesea LGA by applying to amend the geographic condition attaching to entitlements for 15 EGMs from another LGA to the Whittlesea LGA.
37. Mr Whitehouse gave evidence that, while the Club is 'successful' in respect of the EGM revenue earned, the total and per EGM revenue received by the Club was lower than the EGM revenue earned by ALH hotels.
38. In Mr Whitehouse's view the impact of the removal of 75 entitlements from ALH venues was a decrease in EGM expenditure in Whittlesea LGA of \$5,027,724. The Commission notes that ALH purchased 65, not 75, fewer entitlements which alters the calculation to a degree.
39. The Applicant submitted that the Commission 'should take into account the probability or the likelihood of 'backfilling', if this application is not approved' and cited in support of that submission the decision of Victorian Civil and Administrative Tribunal (**VCAT**) in *Club Italia Sporting Club Inc v Brimbank CC* [2011] (**Club Italia**).⁴
40. While VCAT found the issue of 'backfilling' relevant to the determination of an application to increase EGMs at Club Italia, VCAT also found that 'backfilling' is based on 'some



- speculation' and is not 'determinative'.⁵
41. Mr Vasta prepared forecasts for 2011 to 2017 comparing the EGM revenue of the Applicant for 60 EGMs and 75 EGMs. Mr Vasta predicted that the Applicant would increase EGM revenue by about \$550,000 per annum, if the application were granted.
 42. In view of the forecast increase, Mr Vasta also analysed the capacity of the Applicant to proceed with the proposed redevelopment of the Club, if the application were or were not granted. He told the Commission that, if the application were not granted:
 - 42.1. the affordability of Stage 1 would diminish; and
 - 42.2. Stage 2 could not proceed because it would result in the Applicant being overdrawn by \$443,613 in 2016 and \$2,447,326 in 2017.
 43. Mr Vasta noted that the figures for 2016 and 2017 in the forecasts anticipated a decrease in EGM revenue of 20% per annum due to the expected introduction of mandatory pre-commitment in 2016.
 44. Mr Whitehouse's evidence differed in respect of the impact resulting from pre-commitment, namely – he estimated a likely decrease of between 10% and 20% per annum.

Responsible Service of Gambling Evidence

45. The Applicant subscribes to the Responsible Gaming Policy prepared specifically for the Applicant by PVS (**PVS Policy**).
46. Mr Jeynes gave evidence that the Applicant subscribed to the PVS Policy in addition to the Responsible Gambling Code of Conduct, which the Applicant is required to implement under the Act.
47. Mr Jeynes told the Commission that the Applicant Committee is committed to responsible service of gaming at the Club and that the Applicant's committee:
 - 47.1. receives monthly reports regarding the Club's activities and responsible service of gaming;
 - 47.2. received training from Mr Jeynes on problem gambling issues and responsible gambling techniques; andappointed one member to be responsible for responsible service of gambling and that member, Mrs Anna Giuliani, had completed responsible service of gambling training.
48. The Commission commends the Applicant for appointing a member of the Committee to be responsible for responsible service of gambling matters and commends that member for completing the responsible service of gambling training.
49. However, the Commission finds disappointing, as a matter of good governance, the fact



that all the members of the Applicant's committee have not completed the responsible service of gambling training to better apprise themselves of responsible service of gambling issues.

FINDING

50. In balancing the detrimental and positive aspects of this application, the Commission is satisfied that a variation of the venue operator's licence to permit an additional 15 EGMs to be operated at the Club will not result in a net economic and social detriment to the community of the municipal district. The reasons for the Commission's decision are outlined below.
51. In relation to the evidence on 'backfilling', the Commission recognises as relevant the risk that hotel venues in Whittlesea LGA will seek to increase gaming machines if this application is refused but, due to its speculative nature, does not consider the matter determinative. However, the Commission accepts that, in this instance there is a likelihood of 'backfilling' occurring into hotel premises if this application is refused. It also accepts that the per EGM expenditure in those venues is likely to be higher than the per EGM expenditure in the Club.
52. Mr Cardinale, President of the Applicant, committed the Applicant to proceed with the proposed two stages of development at the Club and comply with the following conditions proposed by the Relevant Authority, namely that the Applicant:
 - 52.1. actively participate as a financial member of the City of Whittlesea Responsible Gaming Forum; and
 - 52.2. re-commit to the City of Whittlesea Local Charter for Responsible Gaming
53. It is the expectation of the Commission that the Applicant will honour these commitments made by Mr Cardinale.
54. Taking these commitments into account, the Commission is satisfied that:
 - 54.1. granting this application will assist the Applicant to redevelop the Club's facilities and, as a result, contribute to the community by providing tennis facilities, an all-purpose sports pavilion and a children's play area; and
 - 54.2. the Applicant will have a satisfactory approach to problem gambling.
55. Pursuant to section 3.3.4(1)(c), the Commission must weigh the likely positive economic and social impacts of an application against the likely negative economic and social impacts.
56. Based on the matters set out above, the Commission is satisfied that it should exercise its discretion to approve the application.
57. The administrative process of amending the licence will take place at a time subsequent



to this decision, as provided by section 3.4.20 of the Act.

The preceding document is a true copy of the Reasons for Decision of Miss G. A. Owen (Deputy Chairman) and Ms K Hamond (Commissioner).

Date of Hearing:	25 June 2012
Date of Decision:	27 July 2012
Date of Reasons for Decision:	27 July 2012
Appearing for the Applicant:	Mr P Caillard of Counsel (instructed by Bazzani Scully Brand)
Counsel Assisting the Commission:	Ms S Murray