



**DECISION AND REASONS FOR DECISION**

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* by Craigieburn Sporting Club Incorporated for amendment of its venue operator's licence to vary the number gaming machines at the approved premises, the Craigieburn Sporting Club, Wilmot Park, Craigieburn from sixty-three (63) to seventy (70) gaming machines.

**Commission:**

Ms G.A. Owen, Deputy Chair  
Mr Des Powell, Commissioner

**Appearances:**

Ms Louise Hicks of Counsel for the Applicant  
(instructed by Bazzani Scully Brand)

Mr Bronte Campbell as Counsel Assisting the Commission

**Date of Hearing:**

22 October 2012

**Date of Decision:**

23 November 2012

**Decision:**

That the application be granted subject to the condition in paragraph 37 of these Reasons for Decision.

**Signed:**

**Ms G.A. Owen**  
Chair



## REASONS FOR DECISION

### INTRODUCTION

1. This is an application by Craigieburn Sporting Club Incorporated (the **Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Craigieburn Sporting Club, Wilmot Park, Craigieburn Road, Craigieburn (the **Club**), from 63 to 70 EGMs.
2. The relevant municipal authority is the City of Hume Council (the **Council**). The Council provided the Commission with a submission in respect of the application but was not represented at the hearing of the application. In its written submission the Council highlighted a number of perceived benefits of the application and a number of areas of concern. On balance, the Council submitted that approval of this application would have a neutral to slightly negative impact on the municipality.

### THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (the **Act**). The Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and some members of some communities.<sup>1</sup> For this reason the Act includes safeguards to ensure an appropriate balance is struck between a lawful and legitimate recreational activity for some and harm for others. In particular, the balance is maintained by requiring an applicant who wishes to increase the number of EGMs at a venue to satisfy the Commission of the "no net detriment test" and the other matters set out in section 3.4.20(1) of the Act.<sup>2</sup>
4. The Commission is given discretion to grant or refuse an application.

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<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).



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.<sup>3</sup>
6. Section 3.4.19 of the Act allows the Council to make a submission addressing the economic and social impact of the proposal on the well-being of the community and taking into account the impact of the proposal on surrounding municipal districts. The Commission is bound to take this submission into consideration when applying the no net detriment test: section 3.4.19(5) of the Act. This recognises the special role of local government in representing the people of a community.<sup>4</sup>

#### **THE CITY OF HUME AND THE CRAIGIEBURN SPORTING CLUB**

7. The Club is located within the City of Hume (**Hume**), a Local Government Area situated approximately 20 kilometres north west of the Melbourne CBD. Hume is a large municipality, covering an area of 504 square kilometres and is broken up into three Statistical Local Areas (**SLAs**), Hume-Craigieburn, Hume-Sunbury and Hume-Broadmeadows.
8. The Club is situated in the Hume-Craigieburn SLA and is currently the only gaming venue within the SLA. On 6 May 2010, the Victorian Commission for Gambling Regulation approved the operation of 60 EGMs at the Highlands Hotel, which is also located in the Hume-Craigieburn SLA. The Commission understands that EGMs have not yet been installed in the Highlands Hotel but are scheduled to be operational by mid to late November.
9. For the purposes of limiting the numbers of EGMs within a municipality, Hume is divided into two parts, A and B. Part A, which includes the suburbs of Broadmeadows and Gladstone Park, is subject to a regional cap of 435 EGMs. Part B, where the Club is located, is subject to a municipal limit of 725 EGMs. Currently, 327 EGMs are operating within Part B. Once the Highlands Hotel commences operating EGMs, there will be 387 EGMs operating within Part B of Hume.

<sup>3</sup> *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, 435 ("Romsey").  
<sup>4</sup> *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [247] - [249].



10. In the 2011-2012 financial year, 725 EGMs across 14 venues in Hume generated a total of \$103,993,534 in revenue or \$795 per adult resident of the municipality. That figure is 25% higher than the metropolitan average and 32% higher than the State average. The Commission notes that the average net EGM expenditure across the Hume municipality is skewed by the very high expenditure in the Hume-Broadmeadows SLA which had an average expenditure of \$1,518 per adult resident of the SLA in the 2011-2012 financial year. Conversely, the Commission notes that the average expenditure within the Hume-Craigieburn SLA was comparatively lower at \$259 per adult resident.
11. In terms of social and economic disadvantage, the Hume LGA presents as a significantly disadvantaged municipality, ranking 28<sup>th</sup> out of the 31 metropolitan LGAs in Victoria on the SEIFA Index for Disadvantage.<sup>5</sup> While the average level of disadvantage in the municipality is concerning, the Commission notes that the average is again somewhat skewed by the Hume-Broadmeadows SLA which ranks as the most disadvantaged of the 79 metropolitan SLAs whereas the Hume-Craigieburn SLA ranks as 59th out of the 79 metropolitan SLAs.
12. In this regard, the Commission notes the findings of its predecessor in respect of the Highlands Hotel application and the Hume LGA:

“It is clear though that geo-spatial evidence with respect to the socio-economic status and EGM spending and density within the City of Hume is of critical importance and one must look behind the municipal averages in order to form a view. The observation made earlier that Hume city can be divided into ‘sub-economies’ is particularly relevant in this case.

Averages within the Hume LGA for EGM expenditure and density are affected greatly by the predominance of activity in and around Sunbury and Broadmeadows.

The Commission has taken the view that it is reasonable in these circumstances to look at the relevant statistical factors prevailing in the precinct of the proposed development, which is quite isolated from the more high intensity EGM population to the south of the Hume LGA.

<sup>5</sup> Socio-Economic Indexes for Areas (SEIFA) is a product developed by the ABS to assist in the assessment of the welfare of Australian communities. The SEIFA Index allows the ranking of regions/areas, providing a method of determining the level of social and economic well-being in each region.



Examination of the relevant statistics for the precinct for the proposed venue, which is in effect the Hume-Craigieburn SLA, show very low EGM density (only one venue with 63 machines), and very low expenditure per adult. Additionally, this SLA exhibits no particular signs of socio-economic disadvantage.”<sup>6</sup>

13. While the approval of gaming in the Highlands Hotel will result in 60 EGMs being introduced into the Hume-Craigieburn SLA, the Commission considers that even with the introduction of these machines, the EGM density and expenditure within this region of the municipality will remain relatively low. Further, the Commission notes that the Hume-Craigieburn SLA and the area surrounding the Club show little signs of disadvantage. The Commission also notes that EGM expenditure within Hume has decreased by in real-terms (indexed to CPI) by 10.48% over the last 5 years.
14. In terms of the effect of this application, the Commission notes that approval of this application is predicted to result in a 0.9% increase in the number of EGMs per 1,000 adults within the municipality and a 5.6% increase in the number of EGMs within the Hume-Craigieburn SLA.

#### **THE CRAIGIEBURN SPORTING CLUB'S PREVIOUS APPLICATION**

15. In February 2006, the Club applied to the Victorian Commission for Gambling Regulation (VCGR) for amendment of its venue operator's licence to vary the number of EGMs operating at the Club from 53 to 63. On 9 March 2006, the VCGR granted the Club's application.
16. At the hearing of that application, it was submitted on behalf of the Club that the additional 10 EGMs sought would help fund extensive renovations to the Club including a major refurbishment of the bistro, TAB facilities and the addition of a function and meeting room. To date, the works proposed as part of the 2006 application have not been substantially completed.

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

17. The Applicant gave the Commission extensive materials to establish the economic and social benefits that approval of the application would bring to the municipality. That material is summarised below.

<sup>6</sup> *In the matter of Highlands Hotel (2010) VCGR 58-61*



**Mr Robert Burton**

18. Mr Robert Burton is the current secretary of the Club and provided a witness statement and was cross-examined. Mr Burton has been involved with the Club for over 20 years.
19. Mr Burton gave evidence that the Club currently consists of a 160 seat bistro, gaming room with 63 EGMs, small café area, function room, outdoor balcony and smoking area and an 18 hole public golf course. Mr Burton told the Commission that the Club has around 5000 current members but also draws non-member visitors from across the municipality.
20. Mr Burton gave evidence that the Club has had a strong involvement with the local community from its inception. The Club provides substantial financial grants to numerous sporting and community groups and also provides financial support to the local Northern Health organisation and local hospital. Mr Burton told the Commission that the addition of 7 EGMs would allow the Club to continue to expand its community contributions program while also, to a certain extent, protecting the Club from an anticipated reduction in revenue once the Highlands Hotel commences operation.
21. Mr Burton told the Commission that the Club had planned to undertake significant renovation works after the VCGR approved the installation of an additional 10 EGMs in 2006 but had been able to proceed with those works. According to Mr Burton, the Club completed some capital works, including the refurbishment of the gaming room, introduction of a function room and renovation of the outdoor smoking areas to make them compliant with changes to smoking legislation. Mr Burton told the Commission that the Club was ready to commence the large scale redevelopment of the venue when the State Government announced changes to the regulation of the EGMs in Victoria. The Club, acting on advice, decided not to proceed with the redevelopment of the venue until more certainty regarding the financial implications for the Club were clear.
22. Mr Burton gave evidence that due to the delay in commencing the redevelopment, the costs of the proposed works increased from around \$3 million to \$4.5 million. The Club plans to undertake the works in two stages. Stage 1 will consist of an extension to the bistro, installing new toilet facilities and the introduction of a children's play area. Stage 2 will include the introduction of a new lounge bar, relocation and renovation of the Club's TAB facilities and refurbishment of the outdoor areas.



23. Mr Burton told the Commission that the Club currently had the working capital to complete Stage 1 of the redevelopment whether or not this application were successful. Mr Burton was less clear with regard to Stage 2. As the Commission understands Mr Burton's evidence, the Club will not be able to proceed with Stage 2 in the near to medium term without the additional 7 EGMs sought in this application.
24. In terms of Responsible Service of Gaming, Mr Burton gave evidence that the Club takes its duties in regard to harm minimisation and regulatory compliance very seriously. Mr Burton told the Commission the Club was committed to assisting Gamblers Help to set up a local service in Craigieburn and intended to donate between \$7,000 and \$10,000 to Gamblers Help if this application were successful. While Mr Burton's commitment to Responsible Service of Gaming cannot be questioned, it was clear to the Commission that Mr Burton does not have a hands-on role in managing the implementation of the Club's gaming policies and procedures and the Commission would have benefited from hearing evidence from one of the Club's gaming managers.

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

25. The Applicant provided the Commission with an expenditure report prepared by Mr Timothy Stillwell, a partner of Moore Stephens Melbourne. Mr Stillwell appeared before the Commission to give evidence and be cross-examined.
26. In conducting his analysis, Mr Stillwell conducted a EGM utilisation survey and examined the trends of EGM expenditure within the venue and the Hume LGA. The utilisation survey conducted showed that for 58 of the 228 trading hours monitored, 70% or more of the EGMs were in use. Mr Stillwell gave evidence that utilisation of over 70% is indicative of periods when additional gaming expenditure is potentially foregone by a venue to limited capacity and access to an appropriate choice of EGMs. Accordingly, Mr Stillwell is of the opinion that there is a demand for extra EGMs at the Club and those machines would perform reasonably well.
27. On the basis of the analysis of the recent trend in expenditure on the EGMs operating at the Club, the level of expenditure within the municipality, and the utilisation survey, Mr Stillwell concluded that the level of additional expenditure that would be generated from an additional 7 EGMs would be between \$222,285 and \$362,810 per annum.



28. Mr Stillwell told the Commission that it was reasonable to conclude that 30% to 40% of the expenditure from the additional 7 EGMs would be transferred from other venues within the Hume LGA and in particular, the Highlands Hotel, once it becomes operational. Therefore, in Mr Stillwell's opinion, the increase in expenditure in the municipality as a result of the additional 7 EGMs would be between \$133,371 and \$217,686 per annum. This represents an increase in EGM expenditure in the Hume LGA of between 0.12% and 0.20%.
29. The Commission accepts Mr Stillwell's estimates as reasonable.

### ***Economic and Social Impact***

30. The Applicant engaged Ms Colleen Peterson, a director of Ratio Consultants to prepare a social and economic impact statement to accompany the application. Ms Peterson gave evidence and was cross-examined.
31. Ms Peterson's report stated the principal economic and social benefits of the application as being:
- a small increase in expenditure within the Hume LGA which will have a stimulus effect;
  - increased access to EGMs at peak times for those patrons of the Hotel who seek to use the machines during those times;
  - protection of the Club's revenue stream which will allow it to undertake extensive renovation works to the venue in two stages and to the value of \$4.0 - \$4.5 million;
  - a vastly improved venue including an expanded bistro, new bar and lounge area, new TAB area and new outdoor smoking areas;
  - allowing the Club to continue to support the local community through donations, gifts in kind and complimentary use of the Club's facilities; and
  - creation of 2 equivalent full time positions at the Club.





32. Ms Peterson's report stated that the principal economic and social disbenefit of the application was, as with any new EGMs and increased expenditure on EGMs, the potential to exacerbate the effects of problem gambling. However, Ms Peterson is of the opinion that this disbenefit was unlikely to occur, or should be given low weight by the Commission, because there is already significant access to EGMs within the Hume LGA and the addition of 7 machines to an existing venue will have little impact on the accessibility or access for problem gamblers. Further, as the increase in total expenditure within the municipality is projected to be minimal, Ms Peterson anticipates any increase in expenditure as a result of problem gambling to be low.
33. In Ms Peterson's opinion, the introduction of an additional 7 EGMs into the Club will have a positive impact on the community.

#### ***Community Attitude Survey***

34. As part of Ms Peterson's report, a survey was undertaken to gauge the community's attitude toward the increase in EGMs at the Club, as well as the proposed redevelopment of the venue. The survey was conducted via a mail out to approximately 2000 households in the local community. The Club received a total of 236 responses.
35. The results of the community attitude survey showed strong support for the redevelopment of the venue with 90% in support of the proposal. When told that the redevelopment would be unable to proceed without the addition of 7 more EGMs into the Club, 67% of respondents supported the proposal, 15% opposed the proposal and 17% were neutral towards the proposal<sup>7</sup>.
36. The Commission accepts that there is considerable level of community support for this application and the redevelopment of the venue.

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<sup>7</sup> 1% of respondents did not answer the question



## PROPOSED CONDITIONS

37. Acknowledging the Club's failure to complete the proposed redevelopment of the venue after being successful in its 2006 application, the Club submitted that it would be appropriate for the Commission, if it was to approve this application, to impose the following conditions on the approval to ensure that the works would be completed:
1. The maximum number of EGMs that may be operated at the Craigieburn Sporting Club, Craigieburn Road, Craigieburn (**the Premises**) is a total of 70 EGMs.
  2. If the works to the Premises substantially in accordance with the plans forming Appendix C to the Ratio report dated July 2012 (**the Works**) are not substantially completed by the date that is four (4) years from the date of this approval (or such later date as agreed to in writing by the Victorian Commission for Gambling and Liquor Regulation (**the Commission**)), this approval will lapse and the maximum number of EGMs that may be operated at the Premises will revert to 63.
  3. Craigieburn Sporting Club Inc (**the Venue Operator**) must advise the Commission as soon as the Works are substantially completed. If the Commission has not been advised prior to the date that is four (4) years from the date of this approval (or such later time as agreed to in writing by the Commission) that the Works have been substantially completed, this approval will lapse and the maximum number of EGMs that may be operated will revert to 63.
  4. The Commission may, upon request by the Venue Operator, agree to extend the time that the additional 7 machines may be operated at the Premises prior to the substantial completion of the Works. That request must be made no later than 30 days prior to the date that is four (4) years from the date of this approval. Any request for an extension of time must include an explanation as to why the Works have not been able to be substantially completed.

## LIKELY ECONOMIC IMPACT OF APPROVAL

38. There is frequently a large degree of overlap between economic and social impacts of applications to operate EGMs. Be that as it may, the Commission considers that it is useful for the purpose of the balancing exercise that it must undertake to identify and analyse economic and social impacts as separate categories to arrive at a net position for each before



undertaking the final analysis.<sup>8</sup>

39. The Commission accepts that there will be increased gaming expenditure of between \$133,371 and \$217,686 in net terms within the Hume LGA. On the one hand, this is an economic benefit because it leads to most of the other anticipated benefits of the application. On the other hand, there is the potential for some of this revenue to come from problem gamblers leading to other economic costs such as lost productivity, increased health and social service requirements and other social costs. The Commission accepts that in the context of this application the prospect of increased problem gambling is low. Nonetheless, there are two sides to the coin and not all new revenue generated from new EGMs will be an economic benefit to the community. Further, some of this revenue is lost to the local economy through State taxes and other costs associated with the provision of EGMs.
40. The Commission considers that a redeveloped venue will draw more patrons and also have a positive effect on competition between venues within the municipality and sees this as a small economic benefit of the application.
41. The Commission deliberated over the extent to which weight may be given to the proposed redevelopment of the venue. The Commission considers that Stage 1 of the proposed works should fall outside the scope of this application, as those works will be completed whether or not this application was to be successful. In regard to Stage 2 of the proposed works, the Commission is of the view that, to a certain extent, the benefits arising out of these works have already been factored into the Club's previous application. Notwithstanding this, the Commission accepts that the reality of the situation is that without the success of this application, Stage 2 is unlikely to proceed in the near to medium term. Accordingly, the Commission considers the completion of the Stage 2 works, and its associated economic benefits, should be regarded as a small benefit of this application.
42. Overall, the Commission accepts that there is potential for minor economic downsides of the application through possible increased problem gambling expenditure. This risk is mitigated to some extent by the policies and processes that the Applicant has in place to identify and assist problem gamblers. The risk is further mitigated by the nature of the Premises. Accordingly, the Commission considers that there will be a slightly positive economic impact on the community if the application were to be approved.

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This is consistent with the approach taken by Justice Bell in *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275.



### LIKELY SOCIAL IMPACT OF APPROVAL

43. The provision of additional EGMs at a successful venue that sometimes operates at capacity will have social benefits for those consumers who cannot use machines of their choice when the venue is fully occupied. The Commission accepts that there is a demand for extra EGMs at the Club.
44. The approval of any new EGMs has the potential to increase problem gambling and the effects of problem gambling. In this case, the Commission is satisfied that that potential is low due marginal increase in expenditure that the additional EGMs will generate. This risk is also minimised, so far as is reasonable, by the Applicant's well-developed responsible gambling policy and procedures.
45. The Commission accepts that the Club has a strong influence within the community and provides substantial financial support to many community groups, sporting clubs and other organisations or individuals in need. The Commission considers that approval of this application will assist the Club in providing this support to the community and regards this as both an economic and social benefit of the application.
46. In the end, the social benefits of the proposal need to be weighed against the detriments to arrive at the net social impact. These are difficult matters to weigh and compare. However, on balance, the Commission considers that the likely social impact of the proposal will be neutral.

### CONCLUSION

47. The no net detriment test in section 3.4.20(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 impacts of approval on the well-being of the relevant community will be either neutral or positive.<sup>9</sup>
48. The Commission has considered the likely net economic and social impact of the proposal and concluded that those impacts are likely to be slightly positive.
49. Further, on the material that has been put before it, the Commission is satisfied of the other matters in section 3.4.20(1). The Commission is also satisfied that the Applicant understands



and will continue to act on its obligations to, so far as is reasonable, take measures to prevent problem gambling.

50. Having regard to the Club's previous application and its failure to complete the renovation works that were contemplated as part of that application, the Commission considers that it is appropriate in this case to place conditions on the approval of this application to ensure that, if the Club is to benefit from the revenue of an extra 7 EGMs, it makes good on its commitment to deliver an improved venue. The Commission has considered the proposed conditions put forward by the Club and considers them to be appropriate in the circumstances. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the application subject to the conditions set out in paragraph 37 of these Reasons for Decision.

**The preceding 50 paragraphs are a true copy of the Reasons for Decision herein of –**

**Ms G.A. Owen, Deputy Chair**

**Mr Des Powell, Commissioner**