



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 Ferntree Gully Bowling Club Inc, for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises, the Ferntree Gully Bowls Club, 14 Merricks Close, Ferntree Gully, Victoria, from twenty-eight (28) to thirty-four (34) gaming machines.

Commissioner: Miss Gail Owen, Deputy Chairman

Appearances: Ms Nicola Collingwood of Counsel for the Applicant
(instructed by Bazzani Scully Brand)

Ms Anna Clarke as Counsel Assisting

Date of Decision: 18 December 2012

Date of Reasons: 18 December 2012

Decision: That the application be granted

Signed:

Ms Gail Owen
Deputy Chairman

REASONS FOR DECISION

INTRODUCTION

1. This is an application by Ferntree Gully Bowls Club Inc (the **Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (EGMs) operating at the Ferntree Gully Bowls Club (the **Club**) located at 14 Merricks Close, Ferntree Gully, Victoria, from 28 to 34 EGMs.
2. The Club is situated within the City of Knox. On 25 October 2012, the Knox City Council (the **Council**) advised the Commission that it did not intend to make a submission.
3. The Commission held a public inquiry to consider the application pursuant to section 28(2)(g)(iii) of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* on 23 November 2012.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. Determination of this application is governed by section 3.4.17(1)(b) of the *Gambling Regulation Act 2003* (the **Act**).
5. Section 3.4.20 of the Act sets out the matters to which the Commission must have regard in determining the application, and provides (relevantly):
 - (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—
 - (a) the Commission is satisfied that the amendment of the licence does not conflict with a direction, if any, given under section 3.2.3; and
 - (b) 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 regional limit or municipal limit for gaming machines for the region or municipal district in which the approved venue is located will not be exceeded by the making of the amendment; and
 - (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.

6. 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.¹
7. The Act recognises that, notwithstanding individual rights of self-determination and gaming's recreational legitimacy, gaming on EGMs causes harm to some communities and some members of some communities.² It is for this reason that the Act includes safeguards to ensure that an appropriate balance is struck between a lawful and legitimate recreational activity for some and harm for others.

THE MATERIAL BEFORE THE COMMISSION

8. The Applicant filed the following documents in support of its application:
 - a. Social and Economic Impact Statement prepared by Hayley McFadden of Ratio Consultants Pty Ltd, dated September 2012;
 - b. Gaming Expenditure Estimate, Ferntree Gully Bowls Club, prepared by Michael Clyne, dated August 2012;
 - c. Witness Statement of Christopher John Shaw Hayes, Chief Executive Officer of the Applicant, dated 18 September 2012;
 - d. Witness Statement of Amanda Frances Stewart, Venue Manager of the Applicant, dated 18 September 2012.
 - e. Witness Statement of Andrea Louise North, Gaming Supervisor and Compliance Manager of the Applicant, dated 18 September 2012.
9. The Commission also had before it a statistical report titled Economic and Social Impact Report dated March 2012 (the **Commission Report**), a Pre-hearing Inspection and Compliance Report and a Pre-hearing Size, Layout and Facilities Report, all of which were prepared by Commission officers.

¹ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, 435

² See Gambling Regulation Act 2003 (Vic), s 1.1.(2).

THE CITY OF KNOX AND THE FERNTREE GULLY BOWLS CLUB

10. Based on the material before the Commission:

- a. The Club is located at 14 Merricks Close, Ferntree Gully, Victoria, within the metropolitan Local Government Area (**LGA**) of the City of Knox.
- b. The City of Knox is approximately 30 kilometres east of Melbourne and covers an area of 114km².
- c. The City of Knox is subject to a municipal limit of 1,173 EGMs. Currently, there are 845 EGMs approved for premises within the LGA. However, there are only 757 attached entitlements in the LGA and 11 venues.
- d. As at the 2006 census, the City of Knox had an adult population of 122,579 which is the 7th highest adult population of the 31 metropolitan municipalities in Victoria. The annual rate of population growth projected by the Department of Planning and Community Development is 0.4% over the next five years.³
- e. In terms of social and economic disadvantage, the City of Knox is divided into three Statistical Local Areas (**SLAs**). The Club is situated within the Knox-North-East SLA which is ranked 55 out of 79 metropolitan SLAs (with 79 being the most disadvantaged). By contrast, Knox-North-West (ranked 26) and Knox-South (ranked 13) sit above the metropolitan SLA median.

Social and Economic Impact Statement – Ratio Consultants Pty Ltd

11. Ms Hayley McFadden, Social Geographer/Transport Planner from Ratio Consultants Pty Ltd, gave evidence, on behalf of the applicant, on the social and economic impact of the application on the City of Knox.

12. Ms McFadden's report stated that the potential social and economic benefits of the application could be summarised as follows:

³ *Victoria in Future 2012*, Department of Planning and Community Development

- a modest economic stimulus resulting from a small increase in gaming expenditure with the City of Knox LGA;
- the additional gaming expenditure will help the Club undertake urgent maintenance works to the venue which are necessary to ensure the members and users of the Club's facilities continue to enjoy their surrounds in a comfortable and pleasant environment;
- the accumulation of funds from the additional machines over a number of years, together with the extra revenue that will be created through the increased functions and use of the facilities will assist in further upgrades to the venue;
- the increase of existing community contributions and benefits by \$10,000 per year to the City of Knox LGA;
- additional short term employment associated with the urgent maintenance works and a part time bowls coach; and
- improved accessibility of a gaming venue to City of Knox LGA and better social access to gaming.

13. Further to the potential social benefits of this application, Ms McFadden told the Commission that the Club intends to undertake a four stage renovation and improvement plan, with Stage one comprising of urgent maintenance works including:

- a. an upgrade to the ladies toilet facilities;
- b. a new colour bond roof;
- c. provision of a professional bowls coach for members;
- d. upgrade of security cameras;
- e. replacement of carpet in the gaming room; and
- f. replacement of circuit breakers.

14. In addition, the Club proposes to establish a junior secondary schools bowls competition and a disability bowls competition.
15. Ms McFadden's evidence was unclear on whether the social benefits were the direct result of the expected increase in revenue to the Club resulting from this application. Ms McFadden explained that the Club intends to undertake stage one renovations. However, the increase in revenue will ensure that the urgent maintenance work will occur sooner; being the upgrade of the ladies toilet facilities and the new colour bond roof which will occur within the next 12 months if this application is granted.
16. The principal economic and social detriment of this application is the potential for an increase in problem gambling. However, in Ms McFadden's opinion, given the already significant access to gaming within the City Of Knox, and the addition of 6 EGMs to an existing venue, it is likely to have little impact on the accessibility or access to machines for problem gamblers.
17. In concluding, Ms McFadden told the Commission that, in her view, the potential disadvantage was counterbalanced by the benefits associated with the application and therefore, the introduction of an additional 6 EGMs into the Club would result in a positive impact on the local community.

Evidence of Likely Expenditure

18. The Applicant submitted a report prepared by Mr Michael Clyne estimating the expected increase in gaming expenditure following the introduction of 6 additional EGMs in the first twelve months of trading would be approximately \$122,687.
19. Mr Clyne estimated that approximately 80% of the total gaming expenditure would be transferred expenditure, (that is, approximately \$88,141).
20. Mr Clyne estimated the total net impact on gaming expenditure in the City of Knox for the first year of operation would be approximately \$24,536, being an increase in expenditure of 0.03%.

Evidence from the Applicant

21. Ms Amanda Frances Stewart, Venue Manager of the Club, was called to give evidence regarding the current offerings of the Club and the details of the proposed maintenance works and four stage renovations.
22. The Club currently has 327 members made up of 218 full bowls members, 30 social bowlers, 20 "constitution" members, 8 life members, 3 junior members and 48 social members. The Club offers members and their guests a range of facilities including 3 bowling greens, a bistro for 60 patrons, a combined sports bar/function room, a boardroom and a gaming lounge.
23. The Club holds a full club liquor licence allowing consumption of liquor on the premises (subject to Sunday, Anzac Day and Christmas Day restrictions) by members, authorised gaming visitors and guests of members.
24. Ms Stewart told the Commission that the Club was proposing to complete extensive improvements to the venue over four stages. The first stage will mostly comprise urgent maintenance works due to the current state of the venues leaking roof. While Ms Stewart acknowledged that regardless of whether this application were granted the Club would need to repair the roof, the repairs would occur much sooner if it were granted.
25. Ms Stewart told the Commission that to ensure the Club could continue to keep their bowling teams operating at a high level and enticing more people to join the Club to play bowls, the Club intended to fund a professional part time bowls coach if the application were granted.
26. The later improvements would result in a new kitchen, the purchase of a bus, new furniture, replacement of one of the bowling greens and the provision of water tanks and solar energy. Overall, the improvements are estimated to cost \$601,218 and would be completed by the end of 2016.
27. Mr Christopher John Shaw Hayes, the chief Executive Officer of the Club, gave evidence regarding the redevelopment plans and the current financial status of the Club.

28. Mr Hayes told the Commission that in the year ending December 2011 the Club made approximately \$4,963 in community contributions:

• Cancel Council	\$157
• Australian Red Cross	\$1,656
• Multiple Sclerosis	\$200
• Upper Ferntree Gully Angliss Hospital Auxiliary	\$850
• Upwey Tecoma Football and Netball Club	\$550
• Christmas Party for Special Kids	\$550
• Kings Upper Gully Cricket Club	\$500
• Knox Emergency Relief Share the Joy	\$500

and contributed a further \$622 to not for profit clubs nominated by patrons through a loyalty program. In addition, the Club estimated that it had contributed approximately \$1,300 "in kind" to a variety of local community groups and charities.

29. Mr Hayes told the Commission that the Club is committed to increasing its contributions and donations to the community by \$10,000 per annum (CPI adjusted) with the increased revenue it expects to generate if this application is granted.

30. Ms Andrea Louise North, the Club's gaming supervisor and compliance officer, told the Commission she had over 15 years experience as a gaming supervisor and had worked at the club since 2008. Ms North told the Commission that all ten staff employed in the gaming room and bar have current Responsible Services of Gambling and Responsible Service of Alcohol Certificates, and the gaming room is set up so that it is easy to view patrons arrive and socialise. Ms North considered she would know approximately 75% of the patrons and members who frequent the Club.

FINDINGS BY THE COMMISSION

Social impact of approval

31. While the Commission accepts that a potential increase in EGM expenditure brings with it an inherent risk of an increase in problem gambling, the Commission considers that, given approval of this application will result in the operation of an

additional 6 EGMS, the modest increase in revenue is unlikely to lead to a rise in problem gambling within the City of Knox. While the Commission does have concerns regarding the level of social and economic disadvantage of the SLA in which the Club is located, overall the LGA does not show high levels of disadvantage.

32. The Commission considers this risk is further mitigated by the Applicant's appropriate responsible gambling practices and the Club's commitment to constant training and the proper management of problem gambling.
33. Further, the Commission considers that approval of this application is likely to have a minimal impact on gaming expenditure and gaming patterns and will not increase the availability of EGM's in the community in any significant degree.
34. The Commission understands that one of the positive social benefits of this application is that the urgent maintenance works, mainly comprising of the upgrade of the ladies toilet facilities and the new colour bond roof which will occur within the next 12 months. The Commission is satisfied that the Club, in its current form, provides a positive social benefit to the community. While the completion of further stages renovations will undoubtedly enhance the Club's offering, the Commission is unable to give any significant weight to any renovations which would occur in any event. However, the Commission accepts that the continued operations and upgraded facilities, represents a benefit to the members of the community and others who chose to utilise its facilities.⁴
35. The Commission accepts the Club's commitment to increase its community cash contributions to \$10,000 per annum (CPI adjusted) as a positive benefit. During the hearing the Applicant indicated it was amenable to the Commission imposing a condition requiring a specific annual community contributions. However, the Commission has determined that it is not necessary to do so in this instance.
36. The Commission is satisfied that the net social impact outcome on the City of Knox would be neutral as a result of the grant of this application.

⁴ In the matter of the Wantirna Club, 21 April 2010

Economic impact

37. The Commission accepts that this proposal will result in an increase in gaming expenditure in the City of Knox of approximately \$24,536 in its first year of operation which represents an increase in gaming expenditure of 0.03% within the City of Knox. The Commission notes that the new gaming expenditure is minimal and will have little, if any, economic impact on the municipality.
38. The only evidence of additional employment arising from the grant of this application is the possible employment of a bowls coach for members at \$11,000 per annum) short-term employment arising from the maintenance and renovations works.
39. Accordingly, the Commission considers there will be a neutral economic impact on the relevant community.

Conclusion

40. The Commission has considered the likely social and economic impacts of the proposal and is satisfied that the net economic and social impact of approving this application will not be detrimental to the well-being of the community of the City of Knox.
41. Based on the material provided to the Commission prior to and at the time of the public inquiry, the Commission is satisfied that the Applicant has the authority to make the application.
42. The Commission is satisfied that the Applicant understands and will abide by its obligations to take measures to prevent problem gambling.
43. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the application.⁵

The preceding document is a true copy of the Reasons for Decision of Miss Gail Owen.

⁵ The administrative process of amending the licence will take place at a time subsequent to this decision as allowed by section 3.4.20 of the Act.