

Victorian Commission for Gambling and Liquor Regulation

DECISION

In the matter of an application under section 3.4.17(1)(b) of the *Gambling Regulation Act 2003*, by Footscray Football Club Limited for amendment of its venue operator's licence to vary the number of gaming machines at the approved venue, the Peninsula Club, Corner Gibson & Noel Streets, Dromana, from twenty (20) to thirty-eight (38) gaming machines.

Commission: Mr Bruce Thompson, Chairman
Mr Robert Kerr, Commissioner

Appearances: Ms Sarah Porritt of Counsel for the Applicant
(Instructed by Bazzani Scully Priddle Lawyers)

Mr John Rantino of Maddocks Lawyers on behalf of the Mornington Peninsula Shire Council

Mr Bronte Campbell as Counsel assisting the Commission

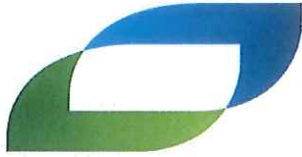
Date of Hearing: 27 March 2014

Date of Decision: 28 March 2014

Decision: That the application be granted.

Signed:

Bruce Thompson
Chairman



Victorian Commission for Gambling and Liquor Regulation

REASONS FOR DECISION

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Date of Hearing: 27 March 2014

Date of Reasons: 15 May 2014

Decision: That the application be granted.

Signed:

A handwritten signature in blue ink, appearing to read 'Bruce Thompson'.

Bruce Thompson
Chairman



REASONS FOR DECISION

INTRODUCTION

1. This is an application by Footscray Football Club Limited (the **Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Peninsula Club, Corner Gibson & Noel Streets, Dromana (the **Club**), from 20 to 38 EGMs.
2. The Applicant purchased the venue and hospitality business in 2010 from the Dromana-Red Hill RSL Sub-Branch Incorporated (the **RSL**). The RSL has been in existence since 1919, however shortly prior to the purchase had ceased its operation at the venue due to financial hardship. As part of the purchase agreement, the Applicant assumed the operating costs of the RSL and allowed it to continue to operate from the venue. The Club and RSL now operate concurrently, with the Applicant receiving the benefit of the venue's gaming revenue and the RSL conducting its welfare work from revenue raised through fundraising and membership fees with its ongoing operation costs paid by the Applicant.
3. The relevant municipal authority is the Mornington Peninsula Shire Council (the **Council**). The Council opposed the application and was represented at the hearing of the application.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

4. 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.¹ 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.²
5. The no net detriment test requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic impacts.

¹ See: s 1.1(2) of the Act.

² See: *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [247] (Bell J).



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.³

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. This recognises the special role of local government in representing the people of a community.⁴

THE MORNINGTON PENINSULA SHIRE

7. The Mornington Peninsula Shire (**Mornington Peninsula**) is a metropolitan Local Government Area (**LGA**) located approximately 80 kilometres south of Melbourne and includes the townships of Mornington, Dromana, Flinders and Rosebud. Mornington Peninsula is comprised of three statistical local areas⁵ (**SLAs**), Mornington Peninsula – West, Mornington Peninsula – East and Mornington Peninsula – South. The Club is located in the Mornington Peninsula – South SLA in the township of Dromana.
8. The Mornington Peninsula is a diverse municipality with a mix of rural, urban and tourist land uses. The coastal townships of the Mornington Peninsula (such as Dromana, Rye and Sorrento) are popular amongst retirees and holiday home owners with other, more affordable, areas of the peninsula being popular amongst young families and first home owners.
9. There are 17 gaming venues within the Mornington Peninsula with approvals to operate up to 826 EGMs. Currently, there are 806 EGMs operating within the Mornington Peninsula which is less than the municipal limit of 1,127 gaming machines. In terms of EGM density, Mornington Peninsula has an overall density of 6.66 EGMs per 1,000 adults which is 20% greater than the metropolitan average and 15% more than the State average.
10. In terms of gaming expenditure, the Mornington Peninsula has an average expenditure per adult of \$653, which is 12% greater than the metropolitan average and 19% greater than the State average. Gaming expenditure within Mornington Peninsula has decreased by 22% in real terms (indexed to CPI) over the past five years. This represents a decline when

³ *Macedon Ranges Shire Council v Romsey Hotel Pty Ltd* (2008) 19 VR 422, 435 ("Romsey").

⁴ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [247] - [249].

⁵ The Statistical Local Area (SLA) is an Australian Standard Geographical Classification (ASGC) defined area which consists of one or more Collection Districts (CDs). SLAs are Local Government Areas (LGAs), or parts thereof. Where there is no incorporated body of local government, SLAs are defined to cover the unincorporated areas. SLAs cover, in aggregate, the whole of Australia without gaps or overlaps.



compared with the overall metropolitan expenditure, which has decreased by 17.1% in real terms over the past five years.

11. In terms of social and economic disadvantage, the Mornington Peninsula – South SLA is ranked 63rd out of the 79 metropolitan SLAs on the SEIFA Index for Disadvantage⁶, which suggests that there is a moderate to high level of disadvantage within the SLA when compared with the other metropolitan SLAs in Victoria. When broken down into a Census Collection District (CCD) level, 16% of CCDs within a 2.5km radius of the Club are in the first quintile of disadvantage and 32% in the second quintile of disadvantage. This indicates that there is a relatively high level of disadvantage in the areas from which it can be expected the Club's gaming patrons will be drawn.

THE MATERIAL BEFORE THE COMMISSION

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

Applicant and Club Evidence

Mr Robert Geoffrey Stubbs

13. Mr Stubbs was employed as the Chief Financial Officer of the Applicant in 2004 and between 2006 and 2013 held the position of Chief Operating Officer. At the time of the hearing, Mr Stubbs had ceased his employment with the Applicant but was called to give evidence on the Applicant's behalf.
14. Mr Stubbs told the Commission that when he commenced his employment with the Applicant, the football club was in a perilous financial state with low membership numbers and poor on-field performance. In an attempt to address these issues, the Applicant resolved to focus on three core areas; improving the football department, upgrading the Applicant's facilities and developing partnerships with community and like minded organisations. As part of the third element, the Applicant developed a relationship with ANZAC House and the Returned and Services League of Australia which resulted in the Applicant managing the Spotswood RSL for a number of years before it closed down.

⁶ 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.



15. Mr Stubbs gave evidence that in 2010, the Applicant was notified that the Dromana-Red Hill RSL had closed due to financial strain. After meeting with the Dromana-Red Hill RSL Committee and inspecting the venue, the Applicant decided to purchase the venue together with its hospitality operation (including gaming). The Applicant could not fund the purchase from cash reserves and sought external finance of approximately \$1.6 million to facilitate the purchase.
16. According to Mr Stubbs, it was important to the Applicant that the RSL continue to operate in the community and, as part of the purchase agreement, the Applicant took on the liabilities the RSL. The RSL now conducts its ongoing operations from a dedicated room in the venue and is provided with rent, utilities and IT facilities free of charge. Additionally, the RSL receives a portion of the fee for every Club membership sold and is provided with free use of Club facilities for RSL events and functions.
17. Mr Stubbs told the Commission that the Applicant was committed to establishing a presence in the community through its support of local community and sporting groups. In addition to the support the Applicant provides the RSL, Mr Stubbs gave examples of the local support that the Club provides, including \$5,000 in annual cash donations to the Dromana Football & Netball Club and cash and in-kind donations to the Safety Beach Golf Club, Dromana Bay Lifesaving Club and Dromana Primary School and other local organisations estimated to total \$75,000 annually.
18. Since its purchase, the Applicant has spent approximately \$200,000 repairing and improving the facilities at the venue. Mr Stubbs told the Commission that there was much more that needed to be done to the Club to increase its attractiveness, competitiveness and ensure its viability into the future. However, the Applicant does not currently have the cash reserves to undertake these works and must prioritise the repayment of the purchase loan and the cost of its gaming entitlements above non-critical capital works at the Club.
19. During the course of his evidence, Mr Stubbs stressed that this was not a case of a football club drawing revenue from a regional community to invest in its football operations. The Applicant is seeking an additional 18 EGMs at the venue to improve its financial position and to help the Club compete against other, more popular, gaming venues on the Mornington Peninsula. Mr Stubbs told the Commission that while the Club as a business was notionally profitable, this profit was calculated without taking into account the purchase loan repayments and ongoing costs of gaming entitlements which are paid by the Applicant. While the Club runs at a loss when those costs are taken into account, the Applicant regards the Club to be a long term venture with a strong profitable future once its large liabilities are paid off.



20. In terms of the extra revenue to be generated by an additional 18 EGMs at the Club, Mr Stubbs told the Commission that the extra revenue would be used to conduct maintenance and improve the facilities at the Club. Mr Stubbs explained that there is a number of critical maintenance works that need to be completed urgently including replacement of the air-conditioning system, upgrading of the venue's electrical system and repairing the venue's roof (which currently experiences significant leaking). Mr Stubbs told the Commission that quotes for these works estimated a total cost of \$300,000. While these works are critical, the financial position of the Applicant is such that they cannot be completed under its current constraints. Mr Stubbs told the Commission that approval of the application would give the necessary additional cash flow to allow the works to be completed in the short term.
21. Approval of the application will also allow the Applicant to realise its long term goal of establishing an Active Community Support Fund which will be used to provide funding to local community groups, sporting clubs and individuals working in the community's interest. The Applicant intends provide \$30,000 per annum (indexed to CPI) to the fund on an ongoing basis.
22. Mr Stubbs also informed the Commission that planning approval had been obtained for a two stage redevelopment of the outdoor areas of the venue. The first stage will include development of a smoking area and the second stage includes the addition of outdoor decking and al fresco dining area. The totality of these works is estimated to cost \$345,000. Mr Stubbs told the Commission that approval of this application would allow these works to be completed sooner than is currently anticipated; however, he acknowledged that these works were not contingent on the success of this application.
23. In summarising his evidence, Mr Stubbs reiterated that the Applicant was committed to a long term relationship with the RSL and the local community and approval of this application will assist the Applicant in improving the Club's facilities and the support it and the RSL provides to the local community.

Ms Pamela Ann Rowler

24. Ms Rowler is the Secretary of the Dromana-Red Hill RSL Sub-Branch. Ms Rowler joined the RSL in 1992 as an Office Administrator and has held the position of Secretary since 2000.
25. According to Ms Rowler, the Dromana-Red Hill RSL Sub-Branch (and its previous iteration, the Dromana RSL Sub-Branch) has been in existence since 1911 and has a proud history of serving the local returned services community. Ms Rowler told the Commission that in early



2010, the RSL was forced to close the premises due to a lack of revenue and, had it not been for the intervention of the Applicant, the RSL Sub-Branch would have been forced to disband.

26. Since the purchase of the Club, Ms Rowler said that the RSL and the Applicant have formed a close relationship. The Applicant pays the operating costs of the RSL, allows it to operate from the venue and provides it with a revenue source through a portion of each Club membership sold. Ms Rowler told the Commission that these initiatives have taken the financial burden away from the RSL and allows it to invest its resources in the welfare and community support that the RSL provides to veterans and their families.
27. Ms Rowler told the Commission that the RSL's revenue is sourced from membership fees, raffles and community events and the distribution it receives from Club memberships. While the RSL no longer has the benefit of gaming revenue, Ms Rowler told the Commission that the RSL 'lives within its means' and operates a budget in surplus of approximately \$500 per year. Ms Rowler said that the purchase of the venue by the Applicant had not in any way limited the operation of the RSL. The Applicant has allowed the RSL to display its memorabilia and honour boards and conduct its ANZAC and Remembrance Day activities.
28. In terms of the work that the RSL does in the community, Ms Rowler told the Commission that the RSL provides welfare support for around 30 veterans. In addition, the RSL provides assistance to individuals and local organisation, including:
 - 28.1. Scholarships to school-aged children up to \$3,000 per year;
 - 28.2. Donations to Veterans Centres and the Rosebud Hospital;
 - 28.3. Welfare activities such as taking less mobile people to doctors, shopping, and the hospital;
 - 28.4. Visiting people at their residences, nursing homes and in hospital; and
 - 28.5. Arranging care packages.
29. Ms Rowler said that the RSL is very thankful for what the Applicant has provided to the RSL and holds no concerns that the Applicant might walk away from its relationship with the RSL, such is the strength of the relationship.

Mr Wayne Tattersall

30. Mr Tattersall is the Chief Financial Officer and Company Secretary of the Applicant and has held this position since January 2010. Mr Tattersall provided the Commission with a witness



statement and gave evidence at the hearing of the application. Mr Tattersall's evidence reiterated the evidence of Mr Stubbs relating to the financial position of the Applicant and the Club.

31. Mr Tattersall told the Commission that the Applicant is a marginal business with little revenue to invest in improving the Club. Despite this, the Applicant is committed to supporting the Club and subsidises its ongoing administration costs and loan repayments. Mr Tattersall noted that these costs came at the expense of further investment in the football operations and suggested to the Commission that this was demonstrative of the level of commitment that is shown by the Applicant to the Club.
32. In terms of additional revenue that will be gained by an increase of EGMs at the Club, Mr Tattersall told the Commission that the revenue would be used to improve the Club and its community initiatives. The Applicant does not see this as a venture that will generate revenue to be used to further football operations, rather to consolidate the marginal financial position of the Applicant and the Club.

Mr Simon Garlick

33. Mr Simon Garlick is the Chief Executive of the Applicant and has held this role since December 2010. Mr Garlick provided the Commission with a witness statement and gave evidence at the hearing of the application.
34. Mr Garlick told the Commission that the Applicant's financial success fluctuates with the on-field achievements of the football club. Unfortunately, the football club has experienced significantly less success than its competitor clubs over its history, which has compounded the financial struggles of the Applicant.
35. In recent times, the Applicant has made engagement with the community a key strategy for building the football club brand and its supporter base. Mr Garlick provided the Commission with numerous examples of the community initiatives that the Applicant has a key role in, including:
 - 35.1. The FRESH program, which provides an opportunity for up to 40 at-risk youths per year to gain a Victorian Certificate of Applied Learning through an academic program conducted by four professional teachers employed by the Applicant;
 - 35.2. Support to 181 Western Region Football League junior football teams;



- 35.3. Provision of opportunities for personal development, recreational activities and learning support to 200 people with disabilities;
 - 35.4. Assisting young people affected by homelessness, drugs, alcohol or other issues in developing life, learning and vocational skills through engagement with sport; and
 - 35.5. Support to over 3,000 newly arrived migrants and refugees each year.
36. In concluding his evidence, Mr Garlick told the Commission that the Applicant has a long-term commitment to the Mornington Peninsula area and is keen to ensure the success and sustainable future of the Club and the RSL.

Mr Peter Dern

37. Mr Peter Dern is the Hospitality Manager of the Applicant and is responsible for the day-to-day operation of the Club, including all regulatory compliance requirements. Mr Dern provided the Commission with a witness statement and gave evidence at the hearing of the application.
38. Mr Dern told the Commission that the Club currently suffers from a lack of gaming capacity, with patrons unable to access a gaming machine during peak times. Mr Dern explained that patrons who were not able to access a machine would often leave the Club and walk to the nearby Dromana Hotel, which has a greater number and selection of EGMs.
39. Mr Dern said that the RSL remained an integral part of the Club's operations, with fundraisers, meetings and RSL events being held at the venue on a regular basis. Additionally, the Club is used by local community and sporting groups for their functions and meetings free of charge.
40. In terms of responsible service of gaming, Mr Dern told the Commission that the venue takes its regulatory compliance obligations seriously. According to Mr Dern, the Club liaises closely with Gamblers Help Southern and all staff are required to undertake on-site training conducted by their venue support worker.
41. Mr Dern acknowledged that an increase in gaming machines at the venue would require an increase in supervision. Mr Dern said that the Club would station additional staff members in the gaming room to ensure the room was adequately supervised.



Mr Leigh Barrett

42. Mr Leigh Barrett is an independent consultant who specialises in the provision of regulatory compliance services for gaming venues in Victoria. Mr Barrett provides venue operators with staff training and responsible service of gaming policy development. The Commission has previously accepted that Mr Barrett is qualified to give expert evidence on matters of gaming regulatory compliance. Mr Barrett gave evidence at the hearing of the application and was cross-examined.
43. Mr Barrett gave evidence that in March 2013, the Applicant engaged him to provide regulatory compliance services for both the Club and the Applicant's other gaming venue, Club Leeds. Mr Barrett was engaged to review the current operation of the gaming venues, develop a Responsible Gambling Policies and Procedures Manual, conduct staff training and undertake regular regulatory compliance audits.
44. Mr Barrett told the Commission that his initial audit of the Club revealed a small number of minor issues however those matters have been rectified and the venue has been fully compliant since. In Mr Barrett's opinion, the Applicant has a strong regard for responsible service of gaming and customer care and its staff shares this attitude.
45. Mr Barrett acknowledged that an additional 18 EGMs at the venue was a significant increase on the Club's current gaming provision, however he is confident that the Applicant and its staff would be able to maintain a satisfactory level of supervision across the gaming room. In summarising his evidence, Mr Barrett remained confident that the Club's policies and procedures, together with its capable staff, will mitigate against problem gambling activity at the venue.

Social and Economic Impact

Mr Nicholas Anderson – NBA Group

46. The Applicant engaged NBA Group to prepare a social and economic impact statement to accompany the application. Mr Nicholas Anderson, Managing Director of NBA Group and author of the social and economic impact statement, gave evidence at the hearing of the application.
47. Mr Anderson told the Commission that the Mornington Peninsula, while considered a metropolitan municipality, shares typical characteristics of both metropolitan and rural regions. The Mornington Peninsula has a diverse range of land uses with a mixture of dense urban areas, rural land and coastal tourist townships. Similarly, the municipality has a diverse



population profile with above average levels of retirees and tourists in coastal areas and young families in affordable areas such as Hastings and Crib Point. Mr Anderson noted that the Mornington Peninsula was projected to have strong population growth as the more affordable areas of the municipality are taken up and holiday homes are converted to permanent housing.

48. In terms of social and economic disadvantage, Mornington Peninsula is ranked 22nd of 79 municipalities on the SEIFA scale of disadvantage (in order of least disadvantaged) which indicates that the municipality as a whole is relatively advantaged. However, the catchment area in which the Club is located (Dromana-Safety Beach) is the sixth most disadvantaged catchment in the municipality and has a number of areas which exhibit concerning levels of disadvantage. In Mr Anderson's opinion, the Dromana-Safety Beach catchment area is likely to become considerably less disadvantaged in the near term as the area continues to grow and large developments such as the Martha Cove Marina become established.
49. Mr Anderson informed the Commission that while the SEIFA scale of disadvantage gave a reasonable indication of the socioeconomic standing of areas, it should be treated with caution in some instances. Mr Anderson explained that SEIFA scores are a consolidation of a number of statistical elements taken from census data (such as household income and unemployment levels) and over-representation of one or more of these statistical elements can result in a score that does not accurately portray the level of disadvantage in an area. For example, Mr Anderson told the Commission that Dromana had a high proportion of retirees who may have large asset holdings but low levels of household income. These persons are not 'disadvantaged' but may present this way due to their low levels of household income. Additionally, Mr Anderson told the Commission that the SEIFA scores for the Mornington Peninsula did not take into account the large population swell (up to 30%) that the municipality experiences during the summer months and a large proportion of the influx in population are likely to be holiday home owners who would present as significantly advantaged on a SEIFA basis.
50. Mr Anderson told the Commission that in assessing the impact of the application, it was important to consider where the Club's patrons come from. As part of its assessment of the Club, the NBA Group conducted a bistro patron survey which showed that 71% of the Club's patrons come from within the Mornington Peninsula. Of that number, 21% of patrons came from Rosebud (which is in excess of 4km from the Club) and 6.8% came from Rye (11km from the Club). Mr Anderson noted that the patron survey was conducted in August 2013 and



it could be expected that the results of the survey would be considerably different if the survey was conducted during the summer period.

51. Mr Anderson told the Commission that it is generally accepted that gaming patrons are more likely to come from areas that are closer to the venue than bistro patrons. However, because of the unique characteristics of the Mornington Peninsula and the results of the bistro patron survey, the gaming patron catchment area of the Club is likely to be larger than the usual 2.5km radius that would be applied in metropolitan municipalities. In Mr Anderson's view, 5km radius should be applied as a catchment area for the Club's likely gaming patrons. Mr Anderson noted that the areas outside a 2.5km radius are considerably less disadvantaged than areas closer to the Dromana town centre.
52. In terms of the benefits of the application, Mr Anderson stated that the key benefit of the application was ensuring the continuing viability of the Club, which in turn, ensures the viability of the RSL. Put simply, the RSL could not operate and continue to provide the considerable community benefit it does without the Applicant's assistance. Approval of the application will also improve the cashflow position of the Club as a business venture which will allow it to undertake critical maintenance works, bring forward the planned outdoor redevelopment works and establish a community support fund to provide cash donations to local community and sporting groups. Mr Anderson also noted an increase in economic stimulus, an additional five full-time equivalent jobs and implied tax benefit for the Club to be benefits of the application.
53. Mr Anderson acknowledged that the benefits of the application need to be balanced against the risk of an increase in problem gambling. In Mr Anderson's opinion, the responsible service of gaming practices of the Applicant, together with the club nature of the venue mitigate against the incidence of problem gambling. Mr Anderson noted that the Club is in close proximity to a supermarket and other retail uses and told the Commission that he had observed the area for a prolonged period and did not see any evidence of the existence of a natural 'ant trail' between the retail uses and the Club.
54. In concluding his evidence, Mr Anderson told the Commission that he believed social and economic benefits of the application outweighed the disbenefits.

Ms Jenny Macaffer – Mornington Peninsula Shire Council

55. The Council provided the Commission with a Social and Economic Impact statement prepared by Council officers and called Ms Jenny Macaffer to give evidence on its behalf. Ms



Macaffer is employed by Council as the Coordinator for Social Planning and Community Development and was the primary author of the Council's submission.

56. Ms Macaffer told the Commission that the Council acknowledges that the application will result in a number of benefits for the local community, including the ongoing support of the RSL, however the Council has assessed the application's detriments to outweigh its benefits.
57. In coming to this conclusion, the Council has noted the following key factors:
 - 57.1. Approval of the application will almost double the Club's gaming capacity thereby having a dramatic effect on the venue's amenity and its attraction to problem gamblers;
 - 57.2. Numerous areas in very close proximity to the Club exhibit significant signs of relative disadvantage and are amongst the most disadvantaged areas in the municipality;
 - 57.3. The Applicant's patron survey suggests that a considerable portion of the venue's patrons come from Rosebud which is a township that also exhibits a high level of relative disadvantage;
 - 57.4. The Mornington Peninsula exhibits other signs of vulnerability including the highest level of dementia across Victorian metropolitan regions and the 7th highest rate of family violence in Victoria;
 - 57.5. The Applicant has failed to substantiate its claim of the creation of five full-time equivalent positions at the Club;
 - 57.6. The location of the Club, in close proximity to a supermarket, post office and other retail stores raises the potential for convenience gambling;
 - 57.7. The Club is in close proximity to numerous community facilities such as community housing, a child care centre, elderly citizen's centre and a church, which increases the venue's accessibility to vulnerable groups; and
 - 57.8. The Council conducted a community attitudes survey in respect of this application. The results of the survey showed that the majority of respondent not supporting an increase in EGMs at the Club.
58. Ms Macaffer stressed that the Council's position is not one of refusing to support any increase of EGMs in the municipality. In this case, the Council is of the view that Dromana is



sufficiently saturated with EGMs and accessibility to gaming should not be heightened by allowing an increase in gaming capacity at the Club, which is already located in a position conducive to convenience gaming and is surrounded by areas of relative disadvantage.

Evidence of likely EGM expenditure

Mr Michael Clyne – Geotech Model

59. The Applicant provided the Commission with an expenditure estimate prepared by Mr Michael Clyne for PVS Australia Pty Ltd (**PVS**). Mr Clyne is an independent gaming expenditure expert and was engaged by PVS to critique and analyse the outputs of the Geotech Model that is used to estimate likely EGM expenditure in gaming venues. The Geotech Model is a retail gravity geo-spatial model that has been presented as evidence and accepted by the Commission, with some qualifications, on numerous occasions. The Commission accepts that Mr Clyne is qualified to give an expert opinion on matters of gaming expenditure.
60. Mr Clyne told the Commission that the Geotech Model predicted the annual expenditure on the 18 additional EGMs to be installed at the Club to be approximately \$1,024,228 of which 91.1% would be transferred from other venues within the municipality. Should the Geotech Model prove to be accurate, it can be expected that expenditure within the Mornington Peninsula would increase by \$91,314 in the first 12 months of the additional EGMs being operational at the Club. This represents an overall expenditure increase of 0.12% across the Mornington Peninsula.
61. In Mr Clyne's view, the Geotech Model's estimate is reasonable and does not require adjustment. Mr Clyne told the Commission that a high level of transferred expenditure is to be expected in a settled gaming environment and where the relevant venue is increasing the number of its gaming machines to address capacity issues. Mr Clyne said an additional 18 EGMs at the venue would help retain visitors and members of the Club who would otherwise attend another venue due to a lack of gaming capacity and variety at the Club.
62. In cross-examination, Mr Clyne conceded that he believed the Geotech Model's predicted transfer percentage of 91.1% to be 'an absolute maximum' and the actual result could prove to be below that number. Mr Clyne noted that even if a nil transfer percentage was applied and the additional EGMs generated entirely new expenditure, the Geotech Model would predict a total increase in revenue of 1.3% of the municipality's current expenditure. Mr Clyne told the Commission that this figure would be 'swamped' by the trending decline in gaming expenditure in this municipality and across Victoria.

Mr Colin Gill



63. The Council elected to retain its own gaming expenditure expert, Mr Colin Gill of Marsh Forensic Accounting and Claims Services, to provide a prediction of the increase in revenue that would be derived from an additional 18 EGMs at the Club. Mr Gill provided the Commission with an expert report and gave evidence at the hearing of the application. Mr Gill has presented expert expenditure evidence to the Commission and the Victorian Civil and Administrative Tribunal on numerous occasions.
64. Mr Gill told the Commission that he believed the Geotech Model's estimate of total increased revenue (\$1,024,228) to be reasonable, however considered the predicted transfer percentage of 91.1% to be 'materially overstated'.
65. Mr Gill based his criticism of the Geotech Model's transferred expenditure prediction on two arguments:
 - 65.1. The inputs to the Geotech Model which relate to venue attractiveness have not been appropriately adjusted to allow for the improvements to the Club which are scheduled to take place over the near to medium term; and
 - 65.2. The Geotech Model applies datasets that are more than two years old and therefore reduce the reliability of the prediction.
66. In order to estimate an alternative transferred expenditure prediction, Mr Gill analysed the gaming revenue of nine newly established gaming venues with comparison to established venues in their relevant municipality. According to Mr Gill, this exercise revealed the impact of the introduction of an additional gaming venue into a municipality and provided a figure representing 'actual transferred expenditure' for that gaming venue. Of the nine venues examined, six resulted in figures that Mr Gill concluded were either too low or too unreliable to use in estimating a transferred expenditure prediction for this application. The remaining three venues resulted in 'actual transferred expenditure' figures of 1%, 37% and 27%. Those figures were then compared against their transferred expenditure estimates from when the relevant applications came before the Commission (6% to 12%, 60% and 59%). Mr Gill stated that this showed that "actual transferred expenditure following the commencement of gaming at the venues listed was materially less than the amount originally forecast".
67. Noting that none of his case studies resulted in an 'actual transferred expenditure' in excess of 40%, Mr Gill considered that it would be appropriate in the context of this application to adopt a base transfer percentage of 40%. Mr Gill then increased this figure to 60% to allow



for the increase in attractiveness of the Club that would result from upgraded facilities and additional gaming capacity.

68. While the Commission considers the criticisms raised by Mr Gill of the Geotech Model's estimate to have some merit, it is of the view that the alternate methodology presented by Mr Gill is flawed. It is not possible for any retrospective analysis to account for the many variables that give rise to, or impact on, transferred expenditure. Mr Gill has undertaken an arithmetical exercise that assumes that reduction in gaming expenditure (above industry trends) experienced by an established gaming venue is a product of introduction of a competitor into the market and not other forces such as reduced attractiveness of the existing venue, changes in management or reduced popularity, or differentiated impact of government policies, which would exist regardless of the increased competition in the market.
69. Additionally, even if it were possible to gain actual transferred expenditure data from a retrospective analysis of gaming revenue, Mr Gill's case studies relate to the introduction of new gaming venues and not the increase of gaming machines at existing venues. Accordingly, the Commission places little weight on Mr Gill's case studies and the methodology relied upon to derive his estimate. Notwithstanding all that, a transfer rate of 60% would be within a range that has been accepted as a guide in the past.

LIKELY ECONOMIC IMPACT OF APPROVAL

70. While there is frequently a large degree of overlap between economic and social impacts of applications to operate EGMs, the Commission considers it useful to identify and analyse economic and social impacts separately to arrive at a net position for each aspect before undertaking the final analysis.⁷
71. The Commission considers the increased expenditure estimate of around \$1,000,000 agreed on by Mr Clyne and Mr Gill to be reasonable and reflective of a small gaming venue that is almost doubling its gaming capacity. While the Commission accepts there are inevitable uncertainties in any forecasting approach, the Commission prefers the estimate of transferred expenditure provided by the Geotech Model (91.1%). In the Commission's view, the Geotech Model is more analytically sound than the approach presented by Mr Gill.
72. Regardless of what level of transferred expenditure eventuates, the Commission considers it likely that increase in expenditure generated by an additional 18 EGMs at the Club will be absorbed by the trending decline in gaming revenue that the municipality is experiencing. Mr



Rantino questioned whether past trends were relevant in assessing the social and economic impact of an application. While the Commission's primary task is to consider whether approval of an application would result in a net social and economic detriment, the Commission must consider other factors, such as environmental factors and gaming trends, when determining whether to exercise its overarching discretion to approve an application. With this in mind, it is appropriate to note that the Commission assesses future impacts based on past experience. One possible future impact is problem gambling risks. If EGM expenditure has been falling (eg in real per capita terms), and expenditure is related to problem gambling risks, then a likely continued fall infers a judgement about the impacts. It could be further contested that expenditure falls did not occur amongst problem gamblers but such an argument would be unsound, since problem gamblers are held to account for a significant component of total EGM expenditure, and policy changes thought to occasion expenditure falls are predominately directed at problem gamblers.

73. The Commission accepts that gaming expenditure, not associated with problem gambling, is legitimate consumption expenditure generated by and large by people enjoying a recreational activity. However, revenue derived from problem gamblers is a disbenefit as it leads to economic costs such as lost productivity, increased health and social service requirements and other social costs. The Commission considers there to be an economic benefit associated with this application through an increase in gaming expenditure within the municipality. The Commission is of the view that the risk of an increase in problem gambling as a result of this application is relatively small, and if it were to eventuate, it is likely to be offset by the economic stimulus that an increase in gaming revenue will bring to the municipality.
74. The Commission considers that increasing the number of EGMs at the venue increase its competitiveness in the gaming market, attract new customers and help it retain patrons that would otherwise leave for another gaming venue. The Commission considers an increase in competition in the gaming market to be an economic benefit and one which is likely to generate ancillary expenditure in the Club's non-gaming revenue sources, such as food and beverage.
75. On balance, the Commission considers that there will be a positive economic impact on the community if the application were to be approved.



LIKELY SOCIAL IMPACT OF APPROVAL

76. The Commission acknowledges that the Applicant's primary business is as a football club and the Club is one part of a much larger and more complicated business operation. While the Commission had initial concerns that the revenue to be generated by an increase in EGMs would not be used to benefit the municipality in which the Club is located, the Applicant's evidence has addressed those concerns.
77. The Commission is satisfied that the Applicant is committed to ensuring the Club is viable and has a strong positive impact on the local community. The Commission places particular weight on the role played by the RSL in the community, which is dependent on the Club's continued support. It is evident that the Club requires immediate capital expenditure to ensure the venue is fit for purpose and is competitive in its market. The Commission considers that approval of this application will provide the Applicant with the cashflow to allow this capital expenditure to take place in the short term. An improved and more competitive venue is a social benefit to the community.
78. The Commission considers the formalisation of the Club's Community Benefit Fund to the value of \$30,000 per annum (indexed to CPI) will have a positive social impact on the municipality. The Commission would encourage the Applicant to involve the Council in the management of that fund to ensure its distributions are used to assist the community in the most beneficial way possible.
79. The risk of an increase in problem gambling is also a social disbenefit. In this case, the Commission is satisfied that the Applicant's responsible service of gaming practices will mitigate against any increase in problem gambling. Notwithstanding the near doubling of machine numbers, the Club would still not rank amongst the larger venues and would, in the Commission's view, maintain a club atmosphere and a connection with patrons which limits problem gambling risks. The Commission is satisfied that the potential for an increase in problem gambling is further mitigated by the high level of accessibility to EGMs that residents of Dromana already have. The Commission considers that it is unlikely that an additional 18 EGMs at this venue will materially increase the prevalence of problem gambling.
80. The Commission accepts that the area surrounding the Club is relatively disadvantaged and, as such, is likely to be more greatly impacted by the effects of problem gambling compared with a more affluent area. However, the Commission was not presented with any evidence that would suggest that problem gambling is prevalent in Mornington Peninsula or at this venue. Similarly, other than the argument that an increase in machines would increase



accessibility, no evidence was presented to the Commission that any element of this particular proposal was likely to encourage problem gambling. A proportion of EGM expenditure, and associated problem gambling risks, is brought by visitors to the area, and to that extent dissipated outside the municipality. Having regard to the material presented before it, the Commission considers the risk of an increase in problem gambling as a result of approval of this application to be relatively small.

81. The Commission is of the view that the likely social impact of the proposal will be positive.

CONCLUSION

82. The no net detriment test in section 3.4.20(1)(c) of the Act requires the Commission to weigh the likely positive social and economic impacts of an application against the likely negative social and economic 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.⁸

83. After consideration of the material put before it, the Commission is satisfied that the approval of this application will not result in a net economic and social detriment to the community of Mornington Peninsula.

84. 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 take measures to prevent problem gambling. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the application.

The preceding document is a true copy of the Reasons for Decision herein of –

Mr Bruce Thompson, Chairman

Mr Robert Kerr, Commissioner

⁸

Romsey (2008) 19 VR 422, 435.