



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 Kilmore Racing Club Ltd for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises, Kilmore Trackside located at East Street, Kilmore, Victoria, from fifty-six (56) to seventy-six (76) gaming machines.

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

Appearances: Mr Dale Curtis as Counsel for the Applicant
Ms Travis Heeney for the Shire of Mitchell
Ms Anna Clarke as Counsel Assisting

Date of Inquiry: 22 January 2013

Date of Decision: 15 February 2013

Date of Reasons: 15 February 2013

Decision: That the application be granted

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

Signed:

Mr Bruce Thompson

REASONS FOR DECISION

INTRODUCTION

1. This is an application by Kilmore Racing Club Ltd (the **Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Kilmore Trackside (the **Club**) located at East Street, Kilmore, Victoria, from 56 to 76 EGMs.
2. The Club is situated within the Shire of Mitchell. On 31 December 2012, the Council provided the Commission and the Applicant with a written submission in opposition of the application.
3. On Tuesday 22 January 2013 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*.

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**) which states that the conditions of a venue operator's licence, including the variation of the number of gaming machines permitted in an approved venue, may be amended. The Commission must determine an application by either granting or refusing to amend a condition of the venue operator's licence.
5. Section 3.4.20 of the Act sets out the matters to which the Commission must have regard to in determining an application of this nature, 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 Commission has discretion to grant or refuse an application, regardless of whether it is satisfied of the matters in section 3.4.20(1). However, the Act provides no specific guidance as to the matters that the Commission should take into account when exercising its discretion (other than section 3.4.20(1)).
7. Further, 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 3.4.20(1)(c). This recognises the special role of local government in representing the people of a community.¹ Evidence of the community's attitude to an application is a relevant consideration for the Commission in weighing the competing impacts as part of the no net detriment test.²
8. 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.³

THE MATERIAL BEFORE THE COMMISSION

9. The Applicant filed the following documents in support of its application:
- Social and Economic Impact Statement prepared by Rhys Quick, Urbis Pty Ltd, dated October 2012;

¹ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275, [247] [249].

² *Romsey* (2008) 19 VR 422, 434.

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

- Social and Economic Addendum Report prepared by Rhys Quick, Urbis Pty Ltd, dated 14 January 2013;
- Gaming Expenditure Estimate Report prepared by Moore Stephens Melbourne (Tim Stillwell), dated 22 October 2012;
- Witness Statement of Leigh James Barrett, Leigh Barrett and Associates Pty Ltd, dated 14 January 2013;
- Witness Statement of John Cameron, CEO of the Kilmore Trackside Racing Club, dated 18 October 2012;
- Kilmore Racing Club Annual Report Year ended 30 June 2012.

10. The Council filed the following documents in relation to the application:

- Economic and Social Impact Submission, Shire of Mitchell, dated 12 November 2012;
- Letter of Understanding from Kilmore Trackside to the Shire of Mitchell, dated 24 December 2012;

11. The Commission also had before it a statistical report titled Economic and Social Impact Report dated January 2013 (the **Commission Report**) and a Pre-Hearing Inspection and Compliance Report, both prepared by Commission officers.

12. Further, on 25 January 2013, Commissioner Kerr conducted a site inspection at the Kilmore Trackside.

THE SHIRE OF MITCHELL AND THE KILMORE TRACKSIDE

13. The Shire of Mitchell is a rural Local Government Area (**LGA**) located approximately 80 kilometres north of Melbourne and covers an area of 2,862 square kilometres. The Shire of Mitchell comprises two Statistical Local Areas (**SLA**) Mitchell - North and Mitchell – South. Generally, the North SLA comprises more rural areas of the Shire and includes towns such as Seymour and Puckapunyal, whereas the South SLA encompasses towns such as Kilmore,

Upper Plenty, Beveridge and Wallan. Significantly, Wallan has recently been included within the urban growth boundary of Melbourne demonstrating the significant growth in population in the Shire of Mitchell.

14. The Shire of Mitchell is subject to a municipal limit of 239 EGMs.⁴ Currently there are five venues approved to operate a total of 193 EGMs within the LGA. There are a further 15 EGMs approved for a venue in the Shire of Mitchell: however, this approval is yet to be implemented as the venue operator has not yet purchased the required attached entitlements.
15. Overall, the municipality has a high density of EGMs and high average expenditure per adult when compared to other rural municipalities. The rural average expenditure per adult for 2011-2012 was \$351 whereas in the Shire of Mitchell, the average expenditure per adult for 2011-2012 was \$574. Further, the Shire of Mitchell has 7.04 EGMs per adult, somewhat higher than the rural average of 5.05 EGMs per adult.
16. As at the 2011 census, the Shire of Mitchell had an adult population of 27,430, which is the 6th highest adult population of the 35 rural municipalities in Victoria. The annual rate of population growth projected by the Department of Planning and Community Development for this LGA is 4% over the next four years.⁵ This is significantly higher than the growth projected for the State.
17. According to the Socio-Economic Indexes for Areas (**SEIFA**), the material before the Commission showed that while Mitchell – South shows little signs of disadvantage, Mitchell– North exhibits a higher proportion of relative disadvantage. 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. When applied to this LGA, Mitchell– North ranked 66th out of 84 rural SLAs, with 84 being the most disadvantaged, while Mitchell– South ranked 16th out of 84.

⁴ Pursuant to section 3.4A.5(3A) of the Gambling Regulation Act 2003 the Victoria Commission for Gambling and Liquor Regulation determined, in accordance with the criteria specified in the Minister for Gaming's Order on 15 August 2012, the maximum permissible number of gaming machine entitlements under which gaming may be conducted in each municipality.

⁵ *Victoria in Future 2012*, Department of Planning and Community Development

Social and Economic Impact Statement – Urbis Pty Ltd

18. The Applicant engaged Urbis Pty Ltd (**Urbis**) to prepare a social and economic impact statement report. This report (together with an addendum report) accompanied the application. Mr Rhys Quick gave evidence and was cross-examined at the public inquiry.

19. The Urbis report stated the principal economic and social benefit of the application is that it will enhance and improve the financial position of the Club, and enable them to:

- continue to provide the community with a superior entertainment and leisure offering, including continued support of events, facilities and services of the Club;
- increase their sponsorship of local sporting events and implement a community contributions scheme, with an annual cash contribution of \$20,000, to be distributed to community groups;
- conduct further capital expenditure works at the venue, albeit modest improvements such as the installation of a veranda.

20. Further, the additional machines will increase availability of gaming for all members of the local community (and visitors from outside the LGA) who enjoy gaming.

21. Mr Quick noted that a disbenefit of this application is the potential for an increase in problem gambling. However, he told the Commission that an increase in problem gambling was unlikely for the following reasons:

- the Club is a destination venue with a variety of facilities;
- the Responsible Gambling Policy employed by the Applicant will minimise the likelihood of problem gambling; and
- problem gamblers in the area already had access to EGMs at other venues.

22. Overall, Mr Quick concluded that while the additional machines will bring a marginal increase in density and expenditure within the municipality, this would only be a temporary concern bearing in mind the rapid population growth expected. Given the accessibility of EGMs over the past 8 years in the community, and the

willingness of the Applicant to work with the Council to address any problem gambling concerns, the net social and economic impacts of this application will not be detrimental to the Shire of Mitchell.

Evidence of Likely Expenditure

23. The Applicant provided the Commission with an expenditure report prepared by Moore Stephens, Accountants & Advisors. Mr Tim Stillwell of Moore Stephens appeared before the Commission to give evidence and was cross-examined.

24. The report concluded:

- The level of additional gross gaming expenditure generated from an increase in 20 EGMs at the Club would be between \$38,106 and \$124,319 per annum. This estimate was based on the venues current Net Machine Revenue (**NMR**) of \$227 per EGM per day, with an assumed incremental NMR of 2.3% to 7.5% per EGM per day over 365 days.
- Of the additional expenditure, 10% to 15% of this would be transferred expenditure, with the remaining expenditure being new expenditure to the Shire of Mitchell. Mr Stillwell told the Commission that he estimates 90% of the new expenditure may be contributed by local residents of the Shire, with the remaining 10% attributed by visitors of the region.
- Based on the following factors:
 - i. the Club's current NMR of \$227;
 - ii. the predicted gaming revenue increase from the Hogan's Hotel;⁶
 - iii. the estimated revenue derived by the additional 20 EGMS; and
 - iv. the estimated transfer expenditure

the estimated gross gaming expenditure per annum at the Club is \$4,751,923.

This follows that the estimated NMR per EGM per day will be \$171.

25. Finally, Mr Stillwell told the Commission that the average new amount of gaming expenditure per adult in the SLA will be \$492 with a density of 7.69 EGMs for 1000

⁶ On 26 June 2012 the VCGLR approved an additional 15 EGMs at the Hogan's Hotel, and it was predicted that the estimated transfer rate was between 10% and 14%. The Kilmore Trackside, being within a 15 kilometres radius of the Hogan's Hotel, was estimated to be contributing to a percentage of this transfer rate.

adults. Mr Stillwell noted that the expenditure per adult will remain low compared with the Shire of Mitchell (\$584) and the State average (\$602).

Evidence from the Applicant

26. Mr John Cameron, the CEO of the Applicant, was called to give evidence regarding the management and business practices relating to the Club.
27. In Mr Cameron's statement to the Commission, he noted that his role encompasses enhancing the financial performance of the Club and ensuring the Club remains a viable participant within the horse racing industry. Mr Cameron has held the position of CEO since March 2011, and prior to that was the CEO of the Moonee Valley Racing Club for over 4 years.
28. Mr Cameron told the Commission that the Kilmore Trackside Club is a destination venue. The venue is not in close proximity to other retail land uses and therefore patrons are required to make a conscious choice to travel to the venue.
29. The Club currently offers two bars, a TAB betting area, a large bistro/function room and a gaming room with 56 EGMs. Further, the venue boasts a thoroughbred racing track and a harness racing track. The Club conducts a various number of race meetings each year. Mr Cameron believes the bistro is the venue of choice for local residents in Kilmore and its surrounding area. The bistro is often at full capacity from Wednesday evenings to lunchtime Sunday. There is often further pressure on the capacity of the bistro on race meeting days.
30. Due to patronage at the venue steadily increasing, Mr Cameron stated there is a constant need for reinvestment, capital expenditure and the provision of quality services and facilities. Further, the increase in popularity of the venue has also impacted on the gaming room, whereby during peak hours there have been instances where patrons cannot obtain access to an EGM. To continue the steady growth at the venue, Mr Cameron told the Commission that approval of this application will allow:
- the venue to satisfy patron demand within the gaming room during peak times;
 - increase the financial capacity of the Club ensuring it can meet demands of maintaining a multi-entertainment venue; and

- re-investment in race days to maintain the Kilmore Racing Club's status within the country racing circuit.

31. As country racing has become increasingly popular over the past years, Mr Cameron told the Commission that one of his roles is to advance the Kilmore Racing Club's standing in the local and horse racing community. The additional revenue generated by the Club via its gaming operations will go towards these goals, including being able to offer higher prize money for the race meetings. This in turn will attract additional competitors, higher quality fields and potentially additional race meetings. While Mr Cameron could not quantify the impact of this on the community in Kilmore, he believes that the above consequences of the additional revenue in the Club will lead to an economic multiplier for the Kilmore township by way of an increase in accommodation, food sales and general economic stimulus brought about by the increase in activity at the Kilmore Racing Club.

32. Mr Cameron told the Commission that the Club has engaged with the Shire of Mitchell and agreed to enter into a Memorandum of Understanding regarding its commitment to a community contribution of \$20,000 per annum. This community contribution is intended to be broadly distributed amongst community groups within the local community. In addition to the above mentioned, the board of the Club has resolved to donate a further \$9000 in total to the following local groups, and \$4,500 of in kind bistro vouchers per annum:

- Kilmore Golf Club;
- Kilmore Netball Club;
- Kilmore Football Club;
- Kilmore Cricket Club;
- Kilmore Tennis Club.

33. The Commission heard from Mr Cameron that the Club takes responsible gaming seriously, and an Induction Manual and the Kilmore Trackside Responsible Gaming Policies and Procedures Manual (the **Kilmore Manual**) have been formulated. The Kilmore Manual and policies are strictly adhered to by all staff members and management. In addition to this, the Club has employed Leigh Barratt & Associates for the past 18 months to conduct regular training for all staff

in order to equip them with the observation and communication skills they need on the floor to ensure best practice in relation to Responsible Service of Gaming.

34. The Applicant called Mr Leigh Barrett to give evidence regarding the management of the premises, and the need for policies and good governance in relation to responsible gaming. Mr Barrett told the Commission that the Applicant has formally adopted the approved Leigh Barrett and Associates Pty Ltd Responsible Gambling Code of Conduct (the **LBA Code**).
35. Specifically, the LBA outlines the Applicant's commitment to strong interaction between staff and customers. Mr Barrett told the Commission that since October 2011 the Club has been audited by both Somers Elite Training and Leigh Barrett and Associates for the venue's compliance with the regulatory and LBA Code requirements. The results of the audits have shown a consistently high level of compliance with these requirements. Further, as stated in the Kilmore Manual, the Club is willing to participate in the Mitchell Responsible Gambling Committee which further demonstrates the Club's commitment to responsible service of gambling best practice.

THE COUNCIL'S SUBMISSIONS

36. The Council filed a social and economic impact submission with the Commission and Mr Travis Heeney, Director of Community & Recreation in the Mitchell Shire Council appeared before the Commission on behalf of the Council.
37. The Mitchell Shire Council submitted that they did not support the application for the additional 20 EGMs at the Kilmore Trackside Club. The basis for this opposition is the Mitchell Shire Council's Gaming Policy (**Gaming Policy**) which states the Council cannot support applications which will result in a ratio of EGMs per 1,000 adults being equal to or higher than the Country Victorian average. Council stated in their written submission that should this application be granted, the average number of EGMs per 1,000 adults would be 8.31 which is much higher than rural Victoria's average of 6.37 per EGMs per 1,000 adults. However, Council also submitted that given the inconsistency between the Gaming Policy to support equal or below average EGM adult density ratios and the Shire's current status of being 31 EGMs below the municipal limit (there are a total of 193 EGMs in

operation and the municipal limit is 239), it would be prudent for Council to review its somewhat dated Gaming Policy.

38. The Shire of Mitchell submitted to the Commission a community survey conducted to gauge the community's attitudes towards the application. The survey, which recorded 78 responses, indicated that 77.9% of those surveyed were in opposition to the additional EGMs at the Club, and 63% felt that the additional EGMs would have a negative impact on the "liveability" in the Mitchell Shire. Further, 55% of the participants felt that the additional 20 EGMs would decrease their sense of well-being while 37.7% felt it would have no effect (6.5% felt it would increase their sense of well-being). The Council acknowledged in their submission that while the community's views were given serious consideration, there were limitations during the consultation process due to the tight timeframes in which the Council is required to make a submission to the Commission given the Christmas period. Further, Mr Heeney told the Commission that he did not dispute Mr Quick's submission regarding the limitations of the survey given the small number of participants and the self-selection of the respondents.
39. Mr Heeney told the Commission at the public inquiry that the Council has recently undertaken some new initiatives in appointing a full time health and wellbeing officer and a full time social planner, and therefore is encouraged by the fact that in future, they will be able to respond in a more holistic manner upon a review of the Council Policy. He told the Commission that the Council was impressed by the Club's response and willingness to work with the local Council and others, including the \$20,000 community contributions. The Council was also impressed with Mr Cameron's attendance at a community consultation regarding this application, and his willingness to listen to community perspectives and respond where possible.
40. The Shire of Mitchell is keen to gain a broader cross-section of community attitudes in future applications. The Commission heard that a Memorandum of Understanding between the Council and the Club will be adopted regarding the commitment by the Applicant to allocate a further \$20,000 per annum in community contributions. Council confirmed that this amount will be managed and distributed by the Council.

FINDING BY THE COMMISSION

41. 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 concludes that the net economic and social impact of approval on the well-being of the relevant community will be either neutral or positive⁷.
42. There is frequently a large degree of overlap between economic and social impacts of applications to operate EGMs. However, the Commission considers that it is useful for the purpose of the balancing exercise to identify and analyse the economic and social impacts separately to arrive at a net position for each before reaching the final determination.⁸

Social impact of approval

43. 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.⁹ 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.
44. While the Commission accepts that a potential increase in EGM expenditure within a community brings with it an inherent risk of an increase in problem gambling, the Commission considers that, given approval of this application will result in a modest increase in expenditure at a lower risk venue, it is unlikely that an additional 20 EGMs will result in a material rise in problem gambling within the Shire of Mitchell. 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 EGMs in the community to any significant degree.

⁷ Romsey (2008) 19 VR 422, 435

⁸ This is consistent with the approach undertaken by Justice Bell in *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275

⁹ See *Gambling Regulation Act 2003* (Vic), s 1.1.(2).

45. The Commission notes the local population has had access to EGMs for almost 8 years. Further, gaming expenditure has declined noticeably in real terms over the past five years in the Shire of Mitchell. The Commission notes that this decline is expected to continue. The risk of problem gambling is further mitigated by the Applicant's responsible service of gaming policies. Accordingly, the Commission is satisfied that the risk of an increase in problem gambling as a result of approval of this application is low.
46. The Commission accepts that the Club represents an important part of the community in Kilmore, and that it is one of only a few venues within the LGA offering multi-entertainment facilities to the community. To continue to provide this to the community, the financial future of the Club will benefit from the revenue derived from the additional 20 EGMs. The Commission accepts that the continued operations of this Club represents a benefit to the community and others who choose to utilise its facilities.¹⁰
47. The Commission also accepts that a social benefit arises where a club makes contributions to charity and sporting groups. This Club's proposed increase in community cash contributions of \$20,000 arising from the grant of this application is regarded as a positive benefit.
48. The Commission notes the opposition to the increase in EGMs from the responsible authority. The Commission accepts the evidence of the Applicant that the Club is located in an LGA of recent strong population growth, and that this growth is projected to continue over the next 4 years due to the number of housing developments particularly in the south of the LGA. The projected growth in population will absorb the increase in gaming expenditure and should help to alleviate the Council's concern regarding their compliance with their Gaming Policy. The Commission notes that certain aspects of the Gaming Policy are inconsistent with the legislative framework governing the Commission's powers and in particular, the no net detriment test. The Commission accepts that the Council is aware of this inconsistency and has made a commitment to the Commission to provide a more holistic approach in future applications.

¹⁰ In the matter of the Wantirna Club, 21 April 2010

Economic impact

49. The Commission considers that there will be a neutral economic impact on the relevant community.
50. The Commission accepts that one of the positive economic benefits of granting this application will be that the Club can further enhance their offerings to the local community. This will enable the Club to advance its standing in the horse racing industry by increasing its offering of cash prizes, increase tourism, and this will lead to an increase in the economy generally within the local community of Kilmore.
51. Moreover, a further economic benefit of granting this application is the continual and potential increase in employment arising from an increase in growth at the Club, and within the local community.
52. The Commission accepts that this proposal will result in an increase in gaming expenditure of between \$38,106 and \$124,319 per annum. Of the additional expenditure, the Commission was told that 10% to 15% of this would be transferred expenditure, with the remaining expenditure being new expenditure to the Shire of Mitchell. While the Commission acknowledges the difficulties in such predictions, it notes the large range between the high and low expenditure predictions. However, even if the Commission accepts the lowest transfer rate and thus the highest prediction of increased expenditure (\$124,319), it considers that the new gaming expenditure is minimal and will have little, if any, economic impact on the municipality. The Commission considers that the expenditure forecast embodies both economic benefits (enjoyment of gambling) and social risks (problem gambling risks) neither of which weigh large in this case.

Conclusion

53. 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 Shire of Mitchell.

54. 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. Further, the Commission is satisfied that the Applicant understands its obligations to take measures to prevent problem gambling.

55. Accordingly, the Commission is satisfied that it should exercise its discretion to approve the application.¹¹

The preceding document is a true copy of the Reasons for Decision of Mr Bruce Thompson, Acting Chairman and Mr Robert Kerr, Commissioner.

¹¹ 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.