



DECISION AND REASONS FOR DECISION

In the matter of an application under section 3.4.17(4) of the *Gambling Regulation Act 2003* by the Phillip Island RSL Sub-Branch Inc for amendment of its venue operator's licence to vary the number of gaming machines at the approved premises the Phillip Island RSL, 225 Thompson Avenue, Cowes from 53 to 58 gaming machines.

Pursuant to section 28 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011*, the application was determined without a public inquiry.

Decision: That the application be granted.

Date of Decision: 28 March 2013

Signed:

Miss Gail Owen

Acting Chairman



REASONS FOR DECISION

INTRODUCTION

1. This is an application by Phillip Island RSL Sub-Branch Inc (the **Applicant**) for amendment of its venue operator's licence to vary the number of electronic gaming machines (**EGMs**) operating at the Phillip Island RSL, 225 Thompson Avenue, Cowes (the **RSL**), from 53 to 58.
2. The relevant municipal authority is the Bass Coast Shire Council (the **Council**). On 23 January 2013, the Council informed the Commission that it did not wish to make a submission in support of, or in opposition to, the application.

THE LEGISLATION AND THE TASK BEFORE THE COMMISSION

3. Gambling on EGMs is a legal recreational and commercial activity in Victoria so long as it is done in accordance with the *Gambling Regulation Act 2003* (the **Act**). The Act recognises that, notwithstanding individual rights of self-determination, gaming on EGMs causes harm to some communities and some members of some communities.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
4. 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. 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

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).

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



5. Section 28 of the *Victorian Commission for Gambling and Liquor Regulation Act 2011* provides that where an applicant proposes to increase the number of gaming machines permitted at approved premises by less than 10% of the number of gaming machines currently operating at those premises, that application may be determined without the need for a public inquiry of the Commission. Accordingly, this application was determined by the Commission without a public inquiry.

THE BASS COAST SHIRE AND THE PHILLIP ISLAND RSL

6. The Shire of Bass Coast (**Bass Coast**) is a rural Local Government Area located approximately 120 kilometres south-east of the Melbourne CBD and includes the major regional centres of Inverloch, Cowes and Wonthaggi. Bass Coast occupies two Statistical Local Areas⁴ (**SLAs**), Bass Coast – Phillip Island and Bass Coast – Balance. The RSL is located in the Bass Coast – Phillip Island SLA.
7. Bass Coast is subject to a regional cap of 216 EGMs⁵. Currently there are five gaming venues in the municipality, operating a total of 174 EGMs. The RSL is one of two venues approved for gaming within the Phillip Island SLA.
8. Recently, the Commission approved two gaming machine applications that impact on Bass Coast. In November 2012, the Commission approved an increase in EGMs at the Wonthaggi Club, Wonthaggi from 58 to 68 and in January 2013, the Commission approved the Continental Hotel, Cowes as suitable for gaming with 27 EGMs. While those applications have been granted, the venue operators are yet to implement their approvals. However, assuming those approvals will be implemented, there will be 211 EGMs operating within Bass Coast.
9. Accordingly, should this application be granted, the installation of an additional 5 EGMs at the RSL will take the number of EGMs operating in Bass Coast up to the regional cap of 216.

⁴ 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.

⁵ Pursuant to section 3.4A.5(3)(b) of the Gambling Regulation Act 2003 the Victorian 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 region.



10. Bass Coast has an average of 6.59 EGMs per 1,000 adults which is 30% more than the rural average and 14% more than the State average. Expenditure on EGMs in the Bass Coast for the 2011-2012 financial year was \$19,134,356 which equates to an average expenditure per adult of \$724 which is 106% more than the rural average and 20% more than the State average.
11. While the statistics of gaming expenditure appear to be concerning, the Commission notes that Bass Coast, and in particular Phillip Island, has a seasonal influx in population and a considerable tourist trade. As such, EGMs in Bass Coast service a market that is much greater than the local population of the municipality and it can be expected that expenditure figures are greater than a comparable municipality without these external factors.
12. The Bass Coast – Phillip Island SLA is ranked 26 out of the 84 rural SLAs on the SEIFA Index⁶ for disadvantage, indicating that Phillip Island shows little sign of relative disadvantage. When broken down into a Census Collection District level, 16% of collection districts within a 5km radius of the RSL are in the first quintile of disadvantage indicating that there are pockets of significant disadvantage in the areas surrounding the RSL. While there are some areas of disadvantage within Phillip Island, the Commission considers that, when compared with other rural SLAs, Phillip Island presents as a relatively affluent area.

THE MATERIAL BEFORE THE COMMISSION

13. The Applicant provided the Commission with extensive material in support of its application, including:
 - a) a Social and Economic Impact Report, prepared by NBA Group, dated 26 October 2012 (**NBA Report**);
 - b) a Gaming Expenditure Estimate Report prepared by Mr Michael Clyne, dated 17 September 2012 (**Clyne Report**);
 - c) a Witness Statement of George Szeitli, dated 5 November 2012; and
 - d) a Witness Statement of Thomas Mallaghan, dated 4 November 2012.
14. Additionally, the Commission considered an Economic and Social Impact Report dated February 2013 prepared by VCGLR staff.

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.



The Phillip Island RSL

15. The Commission is advised that the RSL was established in 1939 and has operated in its current site since 1995 and consists of a 220 seat bistro, children's play area, members lounge, ANZAC function room, boardroom, library and gaming room with 53 EGMs. The RSL currently has 2,805 members of which 817 are Affiliate Members and 1,563 are Social Members.
16. The RSL was formed for the purpose of maintaining the welfare of veterans, widows and the elderly. The support that the RSL's provides to its members is multi-faceted and includes:
 - transportation of members to and from medical appointments, events or other appointments where alternative transport is not available;
 - general assistance with household tasks and maintenance;
 - assisting members with lodging claims for assistance with the Department of Veteran's Affairs; and
 - providing the elderly with a venue and events to break down social isolation.
17. In addition to the individual support that the RSL provides to its members and residents of Phillip Island, the RSL provides significant cash donations to community groups and services and is the facilitator of many events and initiatives that benefit the community of Phillip Island. Some examples of the RSL's work in the community include:
 - an annual donation of \$25,000 to the Woolami Beach Surf Life Saving Club;
 - in 2011, the RSL provided cash grants totalling \$26,000 to community and volunteer groups including the Country Fire Authority, State Emergency Service, Rural Ambulance Service, Cowes Yacht Club and Phillip Island Football Club;
 - yearly ANZAC Day and Remembrance Day services and marches; and
 - development of a Community Men's Shed program for men in the community to work on projects together in a collaborative and supportive environment.



18. Additionally, in 2011 the RSL took over the commercial hospitality operation at the Phillip Island Golf Club (**Golf Club**) following the Golf Club's request for assistance as the operation had been struggling for a number of years. The RSL currently operates the Golf Club bistro four nights a week during the summer months. The commercial hospitality operation of the Golf Club does not return a profit to the RSL but it is intended that the operations will break even.
19. The RSL plans to use the revenue that will be derived by an additional 5 EGMs to continue to fulfil its charitable objects, increase its financial contributions to the community and further develop and implement community focused initiatives and events. The additional revenue will also assist the RSL in continuing to develop its facilities. An additional 5 EGMs at the RSL will also help alleviate demand for EGMs during busier periods at the RSL.
20. The RSL adopts and enforces the Returned & Services League of Victoria's Responsible Gambling Code of Conduct and requires all staff who work in the RSL's gaming room to hold a Responsible Service of Gambling certificate. The RSL is also a subscriber to the Australian Hotels Association (Victoria) Self Exclusion Program and has a close working relationship with Gamblers' Help Gippsland.

Social and Economic Impact

21. The NBA Report concluded that Bass Coast, and in particular Phillip Island, are not significantly disadvantaged communities where problem gambling is likely to have an exacerbated impact. Further, the NBA Report stated that the socio-economic indicia of the municipality are likely to continue to improve through State Government tourism initiatives and local education precinct plans.
22. The NBA Report stated the principal economic and social benefits of the application are derived from the increase in revenue for the RSL which will allow it to:
 - continue and increase the level of support the RSL provides to a wide variety of community organisations;
 - develop a formal community contribution program with distributions of \$20,000 per annum in addition to the contributions the RSL currently provides;
 - continue to support the Golf Club, which is an important community and tourism facility and currently runs at a loss; and



- fund on-going improvements to the RSL premises.
23. In NBA Group's opinion the likely impact of the approval of this application on problem gambling in the Bass Coast Shire will be mitigated through the following factors:
- the venue is proven to be suitable to manage and operate EGMs;
 - the RSL has adopted the Returned & Services League of Victoria's Responsible Gambling Code of Conduct which has been approved by the Commission;
 - the municipal cap that applies to Bass Coast will not be exceeded;
 - a significant portion of the anticipated increase in gaming expenditure is sourced from outside of the municipality; and
 - the socio-economic indicia of Bass Coast suggest that this is a municipality that is well placed to absorb the impacts of problem gambling when compared with a municipality that exhibits higher levels of disadvantage.
24. NBA Group concluded that approval of the application would have a positive social and economic impact on the community of Phillip Island and the Bass Coast municipality.

Evidence of likely EGM expenditure

25. The Clyne Report estimated that, based on an assessment of the current performance of EGMs in the venue, their utilisation rate and the attractiveness of the venue to recreational gamblers, an additional 5 EGMs in the RSL would generate additional annual revenue of \$233,599.
26. Mr Clyne estimated that 30% of the additional expenditure would be transferred from other gaming venues within the municipality. Accordingly, should this application be approved, there would be a net increase in EGM expenditure within the municipality of \$163,519 in the first twelve months of trade (which is a net increase of 0.85%).
27. Noting the significant tourist market of Phillip Island, Mr Clyne estimated that 25% or \$40,880 of the new expenditure to the municipality would be derived from tourists. Accordingly, Mr Clyne concluded that should this application be approved, an additional \$122,639 will be generated through gaming by residents of the municipality.



28. Mr Clyne's transferred expenditure estimate is not founded on an analytical assessment but is based on his experience in the gaming industry and a consideration of other gaming venues within the municipality, their EGM offering and their yearly revenues. While the Commission acknowledges the difficulty in predicting, and ascertaining the correctness of predictions, of estimates of transferred expenditure, because of their subjective basis, the Commission can place little weight on them.
29. The Commission considers that Mr Clyne's estimate of total expenditure is reasonable, however considers his transferred expenditure estimate to lack rigour and analytical basis. Nevertheless, the Commission considers that, due to the lack of competing gaming venues in close proximity to the RSL, there is not likely to be a significant amount of gaming expenditure transferred from other venues. With this in mind, the Commission is prepared to adopt a transferred expenditure range of between 15% and 30% in assessing this application. Based on Mr Clyne's overall assessment of additional expenditure, it can be expected that, if this application is approved, the municipality would see a net increase in EGM expenditure of between \$165,000 and \$200,000 in the first twelve months of trade. The Commission accepts that a significant proportion of that amount is likely to be derived from tourists.

LIKELY ECONOMIC IMPACT OF APPROVAL

30. There is frequently a large degree of overlap between economic and social impacts of applications to operate EGMs. Be that as it may, the Commission considers that it is useful for the purpose of the balancing exercise to identify and analyse economic and social impacts as separate categories to arrive at a net position for each before undertaking the final analysis.⁷
31. As stated above, the Commission accepts that there will be increased gaming expenditure of between \$165,000 and \$200,000 in net terms within the LGA. Expenditure that is derived from people pursuing gaming as a recreational activity is legitimate consumption expenditure and provides an economic stimulus. However, expenditure that is derived from problem gaming is an economic burden as it leads to social costs such as a loss in productivity and an increase in health and social service requirements.
32. The Commission considers there to be an economic and social benefit in strengthening the financial position of the RSL so that it may continue, and increase, its work in the community. The on-going contribution the RSL provides to community groups furthers economic stimulus within the municipality and should be seen as an ancillary benefit.

⁷ *Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation* [2009] VCAT 2275.



33. The Commission accepts that there is potential for some economic downside of the application through possible increased problem gambling expenditure. This potential is limited to some extent by the policies and processes that the Applicant has in place to identify and assist problem gamblers. Accordingly, 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

34. On the material presented to the Commission, it is clear that the RSL has many aspirational goals in terms of increasing its activity and support in the community. However, it is unclear which of these goals, and to what extent, are related to or contingent on the granting of this application. Ordinarily, the Commission places limited weight on proposals that lack certainty or clarity. However, in this particular case, the Commission is satisfied that the revenue that will be generated by an additional 5 EGMs will be used for the betterment of the RSL's members and the Phillip Island community in some capacity. The Commission considers this to be the key benefit of the application.

CONCLUSION

35. The Commission has considered the likely social and economic impacts of the proposal and considered that those impacts are likely to be positive.
36. On the material that has been put before it, the Commission is satisfied of the other matters in section 3.4.20(1). Accordingly, the Commission is satisfied that it should exercise its discretion to approve the application.

**The preceding 36 paragraphs are a true copy of the Reasons for Decision herein of –
Miss Gail Owen, Acting Chairman**